Supreme Court, U.S.
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92-435

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

ARCHVIEW INVESTMENTS, INC., an Illinois corporation,

Petitioner,

vs.

CITY OF COLLINSVILLE, ILLINOIS, a Municipal Corporation; THE HONORABLE GENE J. BROMBOLICH, Mayor of the City of Collinsville; LOUIS JACKSTADT, City Clerk of the City of Collinsville; MELVIN HEINECKE, Zoning Administrator of the City of Collinsville; ROBERT L. DESPAIN, WILLIAM F. GIGLOTTO, GARY KLEIN, MELVIN P. PAMATOT, Collectively Councilmen Comprising the City Council of the City of Collinsville, Illinois,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a Municipal Corporation and its Individual Officials acts can be surmised as arbitrary and capricious in depriving the Petitioner of its Constitutional Rights in violation of 42 U.S.C.A. §1983 when they expressed an aversion to abortion and used it is as a factor in denying the Petitioner a right to a building permit even though their primary purpose in denying a building permit to Petitioner was alleged noncompliance of Building Officials Conference of America Code(BOCA) Requirements without evidence to support the allegations of non-compliance at Petitioner's review hearing.

2. Whether a Municipal Corporation and its Individual Officials deprived the Petitioner of **"Due Process"** by upholding in review hearing as supporting reasons for denial of Petitioner's application for a

building permit reasons which Petitioner was not apprised of or aware of prior to the review hearing.

3. Whether Administrative Review Hearings by an Administrative Body is to be a Hearing de Novo.

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TO: The Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States

PRAYER

The Petitioner, **Archview Investments, Inc.**, Plaintiff-Appellant in the Court below, respectfully prays that a Writ of Certiorari issue to review the Opinion of the Illinois Supreme Court which refused to grant leave to appeal from the Opinion of the Appellate Court of Illinois(Fifth District) entered in this case.

OPINION BELOW

The Illinois Supreme Court on June 3, 1992, denied the Petitioner's, Archview Investments, Inc.'s, Petition for Leave to Appeal from the judgment of the Appellate Court of Illinois(Fifth District) which denied Petitioner's Petition for Rehearing on January 21, 1992 and prior to that, it affirmed on December 12, 1991, a judgment entered in the Circuit Court of Madison County, Illinois, on July 12, 1989, in favor of Respondents-

Appellees-Defendants and against Petitioner-Appellant-Plaintiff. The Appellate Court of Illinois(Fifth District) affirmance entered on December 12, 1991 was reported at 165 Ill. Dec. 387 or 584 N.E. 2d 821 and is reproduced hereto as Appendix B.

STATUTES

28 U.S.C.A. §1257(a):

"(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States."

42 U.S.C.A. §1983:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights,

privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

PARTIES TO THIS PROCEEDING

The caption of this case in this Court contains the names of all parties.

JURISDICTION

The Illinois Supreme Court denied Petitioner's Petition for Leave to Appeal from the prior Opinion and Judgment of the Appellate Court of Illinois(Fifth District) on June 3, 1992. This Petition is filed within ninety(90) days thereafter. The jurisdiction of this Honorable Court is invoked under Title 28 U.S.C.A. §1257(a).

STATEMENT OF THE CASE

The Proceedings Below.

This Petition for Writ of Certiorari arises from the denial of a building permit by

Mayor Gene J. Brombolich on behalf of the City of Collinsville, and various officials of that City, to the Petitioner-Appellant-Plaintiff, Archview Investments, Inc. The initial denial by Mayor Brombolich was issued on March 23, 1981. Following this initial denial, an appeal was taken to the City Council of Collinsville, Illinois and as a result of the review hearing which was held on July 20, 1981, they upheld the decision of the Mayor to deny the Petitioner-Appellant-Plaintiff's application for a building permit. Subsequent to this, then, the Petitioner-Appellant-Plaintiff filed a complaint in the Circuit Court of Madison County, Illinois.

Count I of that complaint sought the issuance of a Writ of Mandamus against the officials compelling them to issue the permit. Count II sought the invalidation of various ordinances of the City of Collinsville. Count

III requested administrative review of the decision of the City Council of the City of Collinsville in upholding the denial of the building permit by the Mayor.

Count IV sought compensatory and punitive damages against the City of Collinsville for violation of constitutional rights under Section 1983 (42 U.S.C.A. §1983). Count V of the complaint sought compensatory and punitive damages against the officials involved for the denial of the permit and their actions in the subsequent appeal.

A trial was heard on the Complaint in the Circuit Court of Madison County, Illinois before the Honorable Lola P. Maddox on April 18, 1988 through April 20, 1988. Thereafter, the issues of fact and law were extensively briefed to the Court. On July 12, 1989, the Court entered a judgment finding in favor of the Respondents-Appellees-Defendants on all

counts. It is from this judgment that the Petitioner-Appellant-Plaintiff, Archview Investments, Inc., appealed to the Appellate Court of Illinois(Fifth District) which subsequently affirmed the judgment of the Circuit Court of Madison County, Illinois on December 12, 1991 and denied a Petition for Rehearing on January 21, 1992. Thereafter, the Petitioner-Appellant-Plaintiff, Archview Investments, Inc., sought leave to appeal the Appellate Court of Illinois(Fifth District) opinion and order to the Illinois Supreme Court who refused to hear the appeal on June 3, 1992.

STATEMENT OF FACTS

Dr. Bolivar Escobedo applied for a building permit on October 21, 1980. This application was never heard from again. The building plans for the proposed construction were also submitted along with the

application.

Melvin Heinecke testified at trial that he was the Building Inspector and Zoning Administrator at the time the application was submitted. (App. 24). After determining that the building was in a correct zoning area, he brought this application to the Mayor. (App. 25). At that time, the Mayor instructed him not to issue the building permit and to put it in a cabinet and leave it there. No reason was given for this action, nor was any defect found in the application. (App. 25, 26, 28-29).

On March 10, 1981, the Petitioner-Appellant-Plaintiff, Archview Investments, Inc., submitted an application for a building permit for the same building at the same location. Subsequent to the original application, the property was transferred to Archview Investments, Inc., a wholly owned

corporation of Dr. Escobedo. At trial, Mr. Heinecke testified that he knew the zoning was correct for this second application and saw no reason for the denial of the permit. Again, the application was brought before the Mayor, whose only inquiry concerning the application concerned the difference of the name on the application (App. 26-27).

At that point, the Mayor instructed Mr. Heinecke not to issue the permit, giving no reason for the denial. Mr. Heinecke testified that he did not give the Mayor any reasons for denying the application. Mr. Heinecke contacted no one else, neither the owner, architect, or the contractor (App. 27). This was in contravention to the normal practice of his office, which would be to identify areas of non-compliance on the permit and thereafter to contact the owner, architect, or contractor to obtain compliance. (App. 28). During his

discussion with the Mayor, the Mayor did not ask if the application complied with the requirements of the ordinances of the City of Collinsville, nor did the Mayor express any defects he observed in the plaintiff's application. (App. 28-29).

Mr. Heinecke further testified that there was nothing different from the plans submitted in this case than from those of any other Doctor's medical building that he had seen during the course of his employment. In fact, he had previously approved a doctor's office building for a Dr. Rallo, and there was no difference between what Dr. Rallo was proposing to do in the way of his plans and the building proposed in this case. (App. 29).

On March 23, 1981, Mayor Brombolich wrote a letter to Archview Investments, Inc. denying the building application. (App. 46-47). The

conclusion of that letter from Mayor Brombolich stated: "if in fact the building is to be used for an abortion clinic, it would be contrary to the general health, safety, and welfare of the public to issue the building permit." The letter also stated: "as Mayor of the City, I feel that it is not in the best interest of the City to issue the permit."

Following the receipt of this correspondence, plaintiff filed an appeal with the Zoning Board of Appeals. However, after advise from the City attorney that zoning was not the issue, the appeal was transferred to the City Council. This transfer was made with the agreement of the city attorney, Dwight Taylor, that any time limits would be waived.

As indicated by counsel for Petitioner-Appellant-Plaintiff at the appeal hearing before the City Council, the case was brought before the Zoning Board of Appeals, rather

than the City Council due to the ambiguous nature of the denial letter. As the denial letter sought to raise issues concerning health, safety, and welfare of the city, counsel for plaintiff interpreted such statements to indicate that the denial was based on the particular use in that particular area, thus raising a zoning question.

This belief was supported by the fact that no specific statement of non-compliance with any City ordinance for building permits was cited in the denial letter. Counsel for plaintiff, Gary Apoian, subsequently testified at trial that any timeliness issue was waived by the Corporate Counsel, Dwight Taylor (App. 37-38).

On July 20, 1981, a hearing was held before the City Council on the appeal of the plaintiff. The City Council is composed of five (5) members; defendants Brombolich,

Pamatot, Giglotto, Klein and DesPain. During the course of the hearing, the only issue addressed by any member of the City Council was whether or not Dr. Escobedo would perform abortions if the facility was allowed to be built in Collinsville.

Mayor Brombolich questioned Counsel Apoian and Dr. Escobedo extensively concerning the intended purpose of the building. The Mayor blatantly inquired as to whether or not Dr. Escobedo proposed to perform abortions in this medical building. Other members of the Council, by their questioning, expressed their concern that Dr. Escobedo would move his present operation from Missouri to the proposed Collinsville building.

Based on the final motion, this appeal was supposed to deal with the issue of compliance with the ordinances of the City of Collinsville and the requirements of BOCA. In

support of the reversal of the Mayor's decision, the Petitioner-Appellant-Plaintiff presented the testimony of M. Thomas Hall, the architect for Archview Investments, Inc. He testified that the Petitioner-Appellant-Plaintiff followed standard procedure in the process of gaining zoning, building code information, and obtaining the criteria necessary for a proper design, both from the City's point of view and the client's point of view. He researched the necessary zoning requirements, zoning code requirements, fire district requirements, and designed the proposed building to conform with those requirements.

Mr. Hall further testified that the proposed plans were consistent with the BOCA provisions and other requirements of the city ordinances. He also indicated that, consistent with the testimony of Mr. Heinecke,

no contact was made from the City to advise that the architectural or structural plans were not in compliance with BOCA provisions. (App. 38-41).

Although Mr. Heinecke, Building Inspector and Zoning Administrator, was present at this hearing, he was not called to testify concerning the compliance of the application with city ordinances or the BOCA provisions. Indeed, the only statement Mr. Heinecke made during the hearing concerned the issue of waste disposal, wherein he indicated there was nothing unusual concerning the application, and that the application was "like any other medical building that was built." Therefore, the testimony of the architect, Mr. Hall, concerning compliance, was uncontroverted by the Mayor or the Building Inspector during the course of this hearing before the City Council.

At the conclusion of the hearing, Commissioner Pamatot, read from a type written, pre-prepared statement as follows:

"I move to concur with the position of the mayor and deny building permit to Archview Investments, Inc., on the following grounds:

1. Appeal is not filed in compliance with the requirements of Section 16.20.010 of the Collinsville Municipal Code.

2. It is contrary to the general health, safety, and welfare of the public in the following respects:

a) Cause traffic problems;
b) Cause parking problems;
c) Cause crowd control problems;
d) Create a public nuisance;
e) Is contrary to public policy of this city.

3. Applicant failed to comply with the requirements of BOCA Basic Building Code\1981 Section 111.2; 111.3; 111.4; 111.5; 111.6; 111.7.

A roll call vote was taken on this motion which passed unanimously. As indicated, the plaintiff brought suit on this denial and the actions of the individual officials of the City in the Circuit Court of Madison County,

Illinois. The trial court(Circuit Court of Madison County, Illinois) eventually held against the Petitioner-Appellant-Plaintiff on all counts.

In the extensive opinion of the Court, two underlying determinations were recurrent to support the decision of the Court in holding against the Petitioner-Appellant-Plaintiff. First is the Court's determination of the timeliness of the appeal. Second is the Court's determination of non-compliance of the application with the BOCA provisions, specifically 111.2 through 111.7. (Court Judgment).

As indicated above, the Building Inspector, Melvin Heinecke, did not testify before the City Council on the issues of compliance with the BOCA provisions. However, at trial, he testified specifically as to each of the alleged violations. BOCA Section 111.2

concerns the payment of certain fees. Mr. Heinecke indicated at trial that these fees were customarily not paid until after the permit was issued. (App. 30).

BOCA Section 111.3 concerns a requirement that the application be signed. Mr. Heinecke testified at trial that the City of Collinsville had never required this of any application and had never denied any application based on non-signature of the application. (App. 30).

BOCA Section 111.4 concerns the question of the sufficiency of the application as to the description and detail of the plans. At trial, Mr. Heinecke indicated that these types of applications had previously been received by the City and the City had always issued permits. He further testified that the description concerning the intended use of the property was as detailed as set forth in other

applications, and that the City had never required any greater description from any other application. (App. 30-31).

BOCA Section 111.5 concerns the sufficiency of the specifications and plans for the building specifically relating to the specifications for the electrical and plumbing outlines. At trial, Mr. Heinecke testified that these requirements would not be necessary for a "shell building". Also, he reiterated that the normal procedure would have been to contact the architect or owner or contractor to obtain additional detail if necessary to meet compliance. In this case, however, Mr. Heinecke testified that the Mayor instructed him to bury the application. This action was taken before Mr. Heinecke had even figured out that there was any detail missing from this application. (App. 32).

BOCA Section 111.6 concerns the front set

backs and side set backs. However, Mr. Heinecke testified at trial that the submitted plans were to scale and that the front and side set backs could easily be calculated with a scale and ruler. In fact, Mr. Heinecke indicated that he had done such calculation and that the rejection of the application was not related to the amount of set back. (App. 32-33).

BOCA Section 111.7 indicates that the building official may require adequate details of the structural, mechanical, and electrical work to be filed. At trial, Mr. Heinecke testified that such a requirement would be inapplicable to a shell building and that no attempt was made to contact either the owner, architect, or contractor to obtain specific information concerning compliance with this section. (App. 33-34). Although, there was other testimony at trial concerning the issue

of compliance, the testimony of Mr. Heinecke was by the City Official, specifically empowered and authorized by the ordinances of the City of Collinsville to decide the issue of compliance with the ordinances and the BOCA provisions.

ARGUMENT

1. DEPRIVATION OF CONSTITUTIONAL RIGHTS, IN VIOLATION OF 42 U.S.C.A §1983.

In Counts IV and V of Petitioner's Second Amended Complaint in the Circuit Court of Madison County, Illinois, Petitioner sought recovery against the City of Collinsville, and the individual City Council members for the deprivation of constitutional rights in contravention of 42 U.S.C.A §1983. In addressing this issue, the Appellate Court of Illinois(Fifth District) concluded that the City's actions could only be considered as unconstitutional had the Petitioner abided by

the BOCA Code requirements. In support of this analysis, the Appellate Court of Illinois(Fifth District) relied on Davis v. City of Chicago (1974), 59 Ill.2d 439, 322 N.E.2d 29; People v. Fleming (1971), 50 Ill.2d 141, 277 N.E.2d 872; see Ashwander v. Tennessee Valley Authority (1936), 297 U.S. 288, 80 L.Ed. 688, 56 S.Ct. 466 (Brandeis, J., concurring); Cochenour v. Cochenour (8th Cir. 1989), 888 F.2d 1244; Espino v. Besteiro (5th Cir. 1983), 708 F.2d 1002, which all basically held that a constitutional issue will not be considered unless it is material to deciding the case. However, the Appellate Court of Illinois(Fifth District)'s final determination that the Petitioner had failed to show that it had satisfied all of the requirements for the building permit, namely, compliance with the BOCA Code Requirements mandated not reaching any discussion of any constitutional

improprieties on the part of the Respondents.

Municipal liability under Section 1983 occurs when official policies cause City employees to violate another person's constitutional rights. It is when execution of a government's policy or custom, whether made by its law makers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government, as an entity, is responsible under § 1983. Carr v. Town of Dewey Beach, 730 F. Supp. 591, 605 (D. Del. 1990); citing City of St. Louis v. Prapotnik, 485 U.S. 112, 122, 108 S. Ct. 915, 923 (1988).

Accordingly, a municipality incurs § 1983 liability when its employees acting pursuant to an official "policy" or "custom" violate a person's constitutional rights. Carr, supra at 605. Such municipal policy may be inferred from a "single decision taken by the highest

officials responsible for setting policy in that area of the government's business." Carr, supra at 606.

It is generally well established that a due process claim under § 1983 is established in the context of building permits or land use permits after a showing of arbitrary, capricious, or illegal denial of such permits by the governmental entity or individuals involved. Littlefield v. City of Afton, 785 F. 2d 596 (8th Cir. 1986); Scudder v. Town of Greendale, 704 F. 2d 999, 1002 (7th Cir. 1983). Examples of such arbitrary and capricious actions include: the imposition of conditions not required by statute or the denial of permits or licenses because of direct pecuniary interest on the part of the municipal defendants. Wilkerson v. Johnson, 699 F. 2d 325, 328 (6th Cir. 1983); acting in derogation of a municipal council's regular

practice of non-involvement in permit issuance, Scott v. Greenville County, 716 F. 2d 1418, 1421 (4th Cir. 1980); the imposition of unconstitutional conditions on the granting of a permit; Littlefield, supra at 607; and the imposition of requirement, not included in the ordinance, upon applicant for a permit when the defendant had an administrative, non-discretionary duty to approve the proposed plat upon the property owners compliance with the regulation. Southern Cooperative Development Fund v. Driggers, 696 F. 2d 1347, 1356 (11th Cir. 1983).

A particularly worthy discussion on the issue of arbitrary and capricious action is found in Bello v. Walker, 840 F. 2d 1124 (3rd Cir. 1988). In Bello, the plaintiffs were denied a permit to build phase four of their proposed development by the municipalities "Code Enforcement Officer" ostensibly, because

the order of construction deviated from the original proposal. In addressing the §1983 allegations of substantive due process violation, the Third Circuit Court of Appeals held that the "deliberate and arbitrary abuse of government power violates an individual's rights to substantive due process." The Court's analysis is quite relevant to the case at bar. Therein, the Court stated that:

> "We need not define, at this juncture, the outer limits of the showing necessary to demonstrate that a governmental action was arbitrary, irrational, or tainted by improper motive. The plaintiffs in the case presented evidence from which a fact finder could reasonably conclude that certain council members, acting in their capacity as officers of a municipality properly interfered with the process by which the municipality issued building permits, and that they did so for partisan, political or personal reasons unrelated to the merits of the application for the permits. These actions can have no relationship to any legitimate governmental objective, and are sufficient to establish a substantive due process violation actionable under § 1983. Bello, Supra at 112. See also Bateson vs. Geisse, 857 F. 2d 1300 (9th Cir. 1988).

With this case authority in mind, the

decision of the Appellate Court of Illinois(Fifth District) should be reversed. As indicated above, the Appellate Court of Illinois(Fifth District)'s analysis was essentially that even though the City policy and motives of the Council members expressed an aversion to abortion and it admittedly played a role in the decision to deny Petitioner the building permit, the action of the Council and the individual members was not violative of § 1983, because the denial of the permit would have resulted, thus eliminating the need to determine the constitutionality of the improper motive (abortion). The basis for this determination was the alleged non-compliance of the permit by virtue of the BOCA Code violations.

This determination is contrary to a proper analysis of a § 1983 case. This Honorable Court should view whether the policy

of the City resulted in the infringement of constitutional rights, or whether the Respondents acted arbitrarily and capriciously in reaching their decision. A review of the sequential events of this circumstance indicates that the Respondents acted arbitrarily and capriciously in this matter.

The uncontroverted testimony at the Circuit Court of Madison County, Illinois trial was that the Mayor, upon receipt of the first application by Dr. Escobedo, promptly instructed the building inspector to "bury" the application. No reason was given for this action nor was any deficit noted in the application. Upon receipt of the second application from Dr. Escobedo's wholly owned corporation, Archview Investments, Inc., the Petitioner, the Mayor undertook the same action to "bury" the application and plans. No statement was given of any defect or any

non-compliance with the city ordinances. The Building Inspector was simply instructed to kill the permit and take no action on it.

The alleged violations of the BOCA Code did not come into play until substantially after the decision had been made to deny the application. It was only in retrospect, in an effort to find support for a decision which had already been made, that the Mayor had the Building Inspector scrutinize the application and find the alleged technical non-compliance. Clearly, at this point in the process, the Mayor is liable under § 1983 for his intentional, arbitrary and capricious actions in denying the permit without any basis whatsoever for such action, other than the impermissible personal aversion to the concept of abortion.

As to the actions of the City Council, while the final motion dealt with violations

of the BOCA Code and the timeliness of the appeal, any objective reading of the transcript of that hearing of July 20, 1981, indicates that compliance with the ordinances of the City of Collinsville was not the primary motive for the decision of the Council. These alleged violations were merely found to support a decision which was made well in advance of this hearing in review of the denial of the application. This is clearly evident from the fact that the councilmen making the motion read from a type-written, prepared statement.

The Council also acted arbitrarily and capricious in finding that the application did not comply with the City ordinances. As indicated above, the only testimony presented to the Council during the hearing on review was from the architect of the Petitioner, who testified that the permit was completely in

compliance with the ordinances and BOCA provisions. No evidence was presented to support the allegations of non-compliance.

The perfect witness, the Building Inspector, Melvin Heinecke, was present, but offered no evidence to support the Mayor's denial of the application. When Mr. Heinecke eventually testified at trial concerning the alleged violations of the BOCA Code, it is clear that there was either no violation or violations which would normally and customarily have been resolved through contact with the owner, architect, or contractor. Therefore, if there were technical violations of the BOCA Code, such non-compliance could easily have been remedied if the Respondents had followed their normal and customary procedures, rather than instructing the Building Inspector to bury the application and take no further action.

It is particularly relevant to note, that the City Council in this case was performing an administerial, non-discretionary action. If the evidence presented at the hearing on review showed compliance, the City Council was under a duty to issue the permit. As set forth above, and based on the review of the record of that hearing, it is clear that the members of the Council were seeking to impose their own personal aversion to the concept of abortion for either personal or political reasons.

Additionally, it is clear that the Council was acting to obtain information which was unnecessary for the administerial determination of the application through their inquisition of Dr. Escobedo concerning his intentions for the use of this medical buildings. It is clear from the testimony of Mr. Heinecke that other medical building did

not meet with this resistance, and were routinely approved. Accordingly, it is clear that the Council and the Mayor acted arbitrarily and capriciously in their denial of the application, both initially, and upon review.

It should be noted that the other issues raised in the motion to concur with the Mayoral denial of the application are not relevant to the discussion of violation of § 1983. The timeliness issue of the appeal is irrelevant, as by the time that issue was raised, the Petitioner had already suffered serious deprivation of it's constitutional rights, as a result of the Mayor's unreasonable denial in it's application. The issues raised concerning general health, welfare, and safety are issues which are appropriate to a zoning question, but which have no play in the conforming or non-

conformity of the application with the ordinances of the City of Collinsville or the BOCA provisions. Thus, the reasonableness of the actions of the City Council must stand or fall on the basis of the compliance issue concerning the BOCA regulations.

2. DUE PROCESS RIGHTS VIOLATED

Basic to the concept of due process is the right to know what one is charged with prior to a hearing so that a proper and meaningful defense can be prepared. This Honorable Court has, in the past, defined a specific requirement of due process by stating in Mullane v. Central Hanover Bank & Trust Co., et al. (1950), 339 U.S. 306, 70 S.Ct. 652, 657 the following:

> "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their

objections."

Furthermore, it is academic that a notice is adequate under the due process clause if it apprises the affected individual of, and permits adequate preparation for, the impending hearing. Chicago Cable Comm. v. Chicago Cable Com'n, 678 F. Supp. 734 (N.D. Ill. 1988). Whitfield v. Simpson, 312 F. Supp. 889 (N.D. Ill. 1970). This Honorable Court should grant this Petition for Writ of Certiorari because the Illinois Supreme Court's refusal to hear this matter, as currently written by the Appellate Court of Illinois(Fifth District), denies this Petitioner its right to due process in this regard.

The Appellate Court of Illinois(Fifth District) upheld the denial of a building permit by the City of Collinsville for the reason that the application was in violation

of various sections of the BOCA Building Code adopted by the City of Collinsville. None of those reasons were included in the Mayor's original denial of a building permit by his letter of March 23, 1981.

All of the alleged BOCA defects surfaced after the mayor had instructed the building commissioner, Mr. Heinecke, to deny the permit and "bury" it in a drawer. The decision was made to deny and reject the application prior to discovery of any alleged BOCA defects. The alleged BOCA violations were only discovered by Mr. Heinecke as he prepared for the hearing on review after the denial of the application by the Mayor. (App. 34).

There is no testimony on the record to indicate that either the plaintiff or any of its agents were ever told that the second application and plans did not fully comply with the BOCA Code until the motion was made

to uphold the decision of the mayor to deny the application after the hearing before the City Council. The architect was not told. (App. 40). In fact, the architect testified that the application was in compliance. (App. 40). No one at any time asked him any questions or communicated with him in any way concerning any alleged non-compliance of the application.

Further, Mr. Heinecke, the Building Commissioner, never reviewed any of these objections with the Petitioner or any of Petitioner's agents, (App. 34-35). The only inquiry after the second application was to determine who in fact owned Archview (App. 44-45). Mr. Heinecke stated that the list of alleged violations was made up after the denial by the Mayor, but before the hearing on appeal, because they " . . . knew it was going to go to court . . . . " (App. 35). The list

of alleged violations were prepared immediately before the appeal hearing with the City Council. (App. 35).

Prior to taking the permit application to the Mayor, the building inspector, Mr. Heinecke, did not see any violations or defects. (App. 36). Further, he did not point out any violation or defect in the permit application to the mayor prior to the rejection of the building permit application. (App. 36). Mr. Heinecke stated that the only information that he could have given the architect, or anyone else from Archview, concerning the reason for denial immediately after the Mayor's rejection of the application was the Mayor had simply said "NO". (App. 36).

There were no other reasons given or known. Even the Mayor admits that violation of the BOCA Code was not the reason for turning down the building permit. (App. 42-

43). The Mayor had not even looked at the plans attached to the application prior to the appeal hearing. (App. 43). The Mayor testified that he only reviewed BOCA to find violations immediately prior to the appeal hearing. (App. 43-44).

It is inconceivable that the Mayor and the City of Collinsville could be allowed to fashion, at the time of the appeal hearing, a new rationale for the denial of a building permit. The plaintiff had no notice that the application had been denied on the basis of any alleged BOCA defects in the permit. This act denies this Petitioner due process by denying the right and the opportunity to prepare a defense prior to the appeal hearing and should act as the basis for liability of the Mayor and the other Respondents under Section 1983.

3. ADMINISTRATIVE REVIEW BY A REVIEWING BODY IS NOT TO

BE A HEARING DE NOVO

It is also important for this Honorable Court to understand the appellate process and the building permit application system. An appeal to the City Council of the denial of a building permit as stated in this petition is not a hearing de novo. It is axiomatic that the role of a reviewing body on administrative review is limited to a determination of whether the agency's decision is contrary to the manifest weight of the evidence. City of Rockford v. County of Winnebago, 134 Ill.Dec. 246, 253, 542 N.E.2d 423, 186 Ill App 3d 303, (2nd Dist. 1989) Accordingly, no new evidence is to be introduced. The only question is whether or not the denial of the application by the issuing official, in this case, the mayor, was supported by the manifest weight of the evidence. As the alleged building code violations were not a basis for the original

denial, such allegations cannot then be raised at the appeal and cannot be relied upon by the City of Collinsville or this Honorable Court in upholding the denial of the building application.

4. LOWER COURT DECISION BASED ON FACTUAL INACCURACIES

Key to the decision of the Illinois Supreme Court and the Appellate Court of Illinois(Fifth District) in this matter appears to be certain facts which are cited in the opinion of the Appellate Court of Illinois(Fifth District) in support of its decision to affirm the decision of the Circuit Court of Madison County, Illinois. However, it must be pointed out to this Honorable Court that some of the key facts have been misapprehended or misconstrued from the record.

The Appellate Court of Illinois(Fifth District)'s opinion as to the reasons for the

denial are inaccurate. According to the Appellate Court of Illinois(Fifth District), the first reason for denial was that "the city was unable to discover pertinent information missing from the face of the application." (App. 9). The Mayor's letter of March 23, 1981 does not state that the city was unable to discover pertinent information and does not state that any information was "missing" from the face of the application. (App. 9).

The Appellate Court of Illinois(Fifth District)'s conclusion that the city was unable to discover "pertinent" information "missing" from the face of the application is an interpretation that this Court cannot make from the body of this letter. In fact, the testimony is clear that the only inquiry made by the city after the second application was an inquiry as to who owned Archview Investment, Inc. (App. 44-45). This

information was provided to the City when Dr. Escobedo made it quite clear that he was the beneficial owner of the corporation.

The Appellate Court of Illinois(Fifth District) also misapprehends the facts where it says in its opinion that Dr. Escobedo repeatedly refused to supply defendants with the missing information. (App. 19-20). There is no evidence in the record that Dr. Escobedo was ever asked anything pertaining to any "missing" information. In fact, the only inquiry made as pointed out above was an inquiry as to the ownership of Archview Investment, Inc. (App. 44-45). There were inquiries following the first application, but the record before the Court is devoid of any evidence of any other inquiry following the second application.

Finally, the Appellate Court of Illinois(Fifth District) mis-states the facts

and the pleadings in this case where it states that ". . . plaintiff does not deny that its application failed to comply with BOCA Provisions 111.2 through 111.7." (App. 18). This plaintiff does deny that its application failed to comply and introduced ample evidence and testimony that the permit application did comply.

As to BOCA Section 111.2, Mr. Heinecke testified that it is common practice in Collinsville that fees are not paid until a permit is issued and that every application from January 1, 1980 to April, 1988 shows a paid receipt stamped after the date of application. (App. 37). Custom and usage particularly concerning the interpretations of rules and regulations of administrative bodies may be binding upon such administrative bodies. Holland vs. Quinn, 67 Ill. App. 3d 571, 385 N.E. 2d 92 at 94, (1st Dist. 1978).

Given the long standing practice of the City of Collinsville in the enforcement of Section 111.2, it can not now come in and change the rules for this applicant. To do so would be arbitrary and capricious, and proves one of the points which the plaintiff is seeking to establish in this litigation.

The Appellate Court of Illinois(Fifth District)further found that there was a violation of BOCA Code 111.3 in that the permit application, signed by the architect, was not accompanied by a verified Affidavit of the owner that the person making the application of the proposed work had authority to do so. However, the evidence is clear that there were no such Affidavits on corporate applications or any other applications issued and filed with the city between January 1, 1980 and April of 1988. This applicant was in as much compliance as every other applicant

who had worked on this process.

Also, Archview was not in violation of Section 111.4 or Section 111.5 for failing to adequately describe the use and occupancy of the building or the work to be performed in the application. Mr. Heinecke testified that he has received other applications without a complete building plan including those showing those "always issued permits," (App. 30). There was no greater or more detailed description of the use or the work to be performed in any of the applications from January 1, 1980 to April of 1988 and the City of Collinsville has never required any greater description from other applicants (App. 31).

Section 111.6 requires that there be a site plan. The only possible violation disputed in the evidence was a lack of side and front set-backs. Mr. Heinecke admitted that the front and side set backs could easily

be calculated since the drawings were to scale and the boundaries of the property were on the drawings. Indeed, he admitted that he had, in fact, calculated them. (App. 32).

The allegations allegedly supporting a violation of 111.7 are that the plans and specifications do not show designs or calculations for steel beams, joist and bearing exterior walls. Section 111.7 is permissive in nature and states that the building official may require adequate detail. Here Heinecke admitted that he never requested any engineering details. (App. 33-34). Accordingly, the plaintiff should not be faulted for non-compliance with a request which was never made by the only official who could make the request.

The Appellate Court of Illinois(Fifth District) also finds that Archview failed to comply with the BOCA Code and says that

Petitioner agrees with that contention. There is neither a concession nor an assertion in Petitioner's brief to support such an assertion. Also, it is clear that the city did not request any further information from the owner or the architect after the second application. In fact, the undisputed evidence is that the mayor told Mr. Heinecke to bury the application before the existence or non-existence of any deficiency under the BOCA Code was even considered. As this was not a basis for denying the permit initially by the issuing official, the mayor, it may not now be considered by this Honorable Court or any other body in determining whether or not the denial was arbitrary or capricious.

REASONS FOR GRANTING THE WRIT

This Honorable Court should grant Certiorari in order to ascertain an important question of federal law as to whether a

Municipal Corporation and its Individual Officials can deprive someone of its Constitutional Rights in violation of 42 U.S.C.A. § 1983 when an expressed aversion to abortion is a factor in denying someone a right to a building permit and the primary reasoning in denying someone a right to a building permit was noncompliance with the Building Officials Conference of America Code(BOCA) Requirements even though there was no evidence to support the primary reasoning for denial of a building permit at a subsequent review hearing. Further, this Honorable Court should also grant Certiorari to ascertain whether a Municipal Corporation and its Individual Officials deprived someone of its "Due Process" by not apprising or making someone aware of prior to a subsequent review hearing the initial supporting reasons for denial of a building permit. Lastly, this

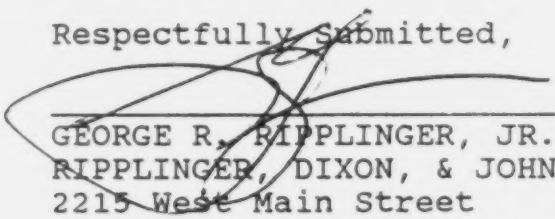
Honorable Court should grant Certiorari to ensure that the proper standard of review is applied to this matter.

CONCLUSION

The Petitioner in this matter contests the manner in which a Municipal Corporation and its Individual Officials dealt with their application for a building permit. Namely, violations of 42 U.S.C.A. §1983, due process, and improper procedures in administrative proceedings have been inflicted on Petitioner by Respondents. This Honorable Court can not allow the Respondents to take the Constitution of the United States in their own hands to sculpt, mold, fashion, and manipulate it according to what it perceives it to be. To allow that would give the Respondents the ability to be "above" the Constitution and would thus render the Constitution as meaningless when applied to anyone else.

WHEREFORE, for the above and foregoing reasons, Petitioner respectfully prays that this Honorable Court issue its Writ of Certiorari to the Illinois Supreme Court.

Respectfully Submitted,



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APPENDIX A

App. 1

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
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June 3, 1992

Mr. George R. Ripplinger, Jr.
Ripplinger, Dixon & Johnston
2215 West Main Street
Belleville, IL 62223

No. 73296 - Archview Investments, Inc., etc., petitioner, v. City of Collinsville, etc., et al., respondents.
Leave to appeal, Appellate Court, Fifth District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on June 25, 1992.

APPENDIX B

App. 2

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

Docket No. 5-89-0530

(Decided December 12, 1991; Rehearing Denied January 21, 1992)

ARCHVIEW INVESTMENTS, INC., an Illinois corporation,	) Appeal from the Third Judicial Circuit,
Plaintiff-Appellant,	) Madison County, Illinois
vs.	)
CITY OF COLLINSVILLE, ILLINOIS, a Municipal Corporation; THE HONORABLE GENE J. BROMBOLICH, Mayor of the City of Collinsville; MELVIN HEINECKE, Zoning Administrator of the City of Collinsville; ROBERT L. DESPAIN, WILLIAM F. GIGLOTTO, GARY KLEIN, MELVIN P. PAMATOT, Collectively Councilmen Comprising the City Council of the City of Collinsville, Illinois,	) No. 81-MR-222) Honorable Lola Maddox, Judge Presiding
Defendants-Appellees.	)

Unsuccessful applicant for building

permit filed action against city officials alleging violation of constitutional rights under federal civil rights provision and seeking writ of mandamus to compel issuance of building permit. The Circuit Court, Madison County, Lola Maddox, J., granted judgment for city and city officials, and applicant appealed. The Appellate Court, Goldenhersh, P.J., held that: (1) building permit application's failure to supply information required under city building code, when combined with refusal to supply missing information, were adequate reasons to decline to issue permit; (2) question of whether denial was in part based on city council members' consideration of abortion issue was not necessary to decision and would not be addressed; and (3) mandamus could not be granted absent showing of clear unambiguous right to requested relief.

Affirmed.

William A. Mueller, Ripplinger & Dixon, Belleville, IL, for **Archview Investments, Inc.**

Thomas Lay Burroughs, Draheim & Pranschke, and Kathleen L. Pine, Shepherd, Phoenix & von Gontard, P.C., St. Louis, MO, for **Robert L. Despain**.

G. Edward Moorman, Williamson, Webster, Groshong, Moorman & Falb, Alton, IL, for **Defendants-Appellees**.

PRESIDING JUSTICE GOLDENHERSH delivered the opinion of the court:

Plaintiff, Archview Investments, Inc., appeals from a judgment of the Circuit Court of Madison County in favor of defendants, City of Collinsville, Mayor Gene J. Brombolich, City Clerk Louis Jackstadt, Zoning Administrator Melvin Heinecke, and City Council members Robert L. DesPain, William F. Giglotto, Gary Klein, and Melvin P. Pamatot,

entered after a bench trial, finding that plaintiff's building permit application was properly denied.

In this appeal, plaintiff contends: (1) that defendants' actions deprived it of constitutional right in violation of section 1983 of the United States Code (42 U.S.C. §1983 (1979)), (2) that defendants, City Council members, should not have been granted qualified immunity by the circuit court, (3) that the administrative decision of the City Council is against the manifest weight of the evidence, and (4) that the trial court erred in not issuing a writ of mandamus to compel issuance of the building permit. We affirm.

On October 21, 1980, Dr. Bolivar Escobedo, an obstetrician/gynecologist licensed to practice in Missouri, filed an application for a permit to build an office building on a parcel of land he owned in

Collinsville. He filed the application with the proper authorities in the City of Collinsville (City). Although the application was completed by Dr. Escobedo's architect, Thomas Hall, Dr. Escobedo was listed as the owner of the proposed building, described on the application as an "office building for doctor, with a rental space for more doctors."

City Zoning Administrator Melvin Heinecke testified that upon receipt of the application, he presented it to Mayor Gene J. Brombolich (Mayor) for review, and the Mayor instructed Heinecke to "bury it." Heinecke further testified that there was no discussion between himself and the Mayor at that time regarding any deficiencies in Dr. Escobedo's application. Shortly thereafter, the Mayor, who also serves as Police Commissioner, requested a police investigation of Dr. Escobedo's background. A memorandum dated

November 6, 1980, to Police Commander Nick Mamino from Detective John Swindle revealed that Dr. Escobedo performed abortions as part of his medical practice in St. Louis County, Missouri. The memo further stated that Dr. Escobedo's St. Louis County office had attracted antiabortion protesters and police intervention was occasionally necessary. Also included was the indication by a St. Louis police officer that neither Dr. Escobedo nor his associated had ever deliberately created any problems. No further action was taken on Dr. Escobedo's application, and none was requested.

On January 28, 1981, articles of incorporation of the plaintiff corporation were filed with the Illinois Secretary of State. On March 10, 1981, the City received another application for a permit to build a "multi-tenant office building" at the same

location indicated by Dr. Escobedo's application of October 21, 1980. The March 10, 1981, application was also prepared by Thomas Hall, but plaintiff corporation was listed as the owner. The specifications and floor plans were similar to the documents submitted with the October 21, 1980, application, and Zoning Administrator Heinecke once again brought the application to the Mayor's attention. The Mayor initiated a second investigation by Detective Swindle regarding the application submitted by plaintiff. The results of that investigation were sent in a memorandum dated March 13, 1981, from Detective Swindle directly to the Mayor. Based on the contents of the memo, it appears that the Mayor was attempting to ascertain whether Dr. Escobedo was associated with plaintiff. Detective Swindle reported that after contacting numerous individuals, he

was unable to determine anything other than the identities of the incorporator and the registered agent, neither of whom was Dr. Escobedo. According to the report, Thomas Hall was contacted but refused to disclose Dr. Escobedo's affiliation with plaintiff corporation, if any. Hall referred the detective to Buddy Cooper, an attorney for plaintiff, who claimed he could not divulge any information without conferring with his client. Only after numerous inquiries was the City able to determine that Dr. Escobedo was the sole shareholder of plaintiff.

On March 23, 1981, the Mayor sent Dr. Escobedo a letter denying the building permit. Cited as reasons for denial were the following: (1) the City was unable to discover pertinent information missing from the face of the application, and (2) that abortion clinics are contrary to the general

health, safety and welfare of the public.

Fourteen days after receiving the Mayor's letter, plaintiff filed an appeal of the Mayor's decision with the Zoning Board of Appeals (Zoning Board). Plaintiff was then advised by the City's corporation counsel, Dwight Taylor, that zoning was not at issue, whereby plaintiff transferred his appeal to the City Council. According to the Collinsville Municipal Code (Code), article V, section 501.1, appeals to the Zoning Board must be filed within 15 days of the matter complained of. Conversely, chapter 16, section 16.20.010, of the Code requires that all appeals to the City Council regarding building permit decisions must be filed within five days of the occurrence giving rise to the appeal. There is a dispute among the parties as to the timeliness of plaintiff's appeal to the City Council and whether defendants waived

any time limitations. Plaintiff claims the City's corporation counsel, Dwight Taylor, assured plaintiff's attorney that the City would waive the five-day limitations period and allow plaintiff to transfer its appeal from the Zoning Board to the City Council. Plaintiff entered into evidence a memorandum allegedly dictated by plaintiff's counsel at the time of his conversation with Taylor, noting the waiver agreement. At trial, Taylor denied making such a statement on behalf of the City.

Nevertheless, the City Council, comprised of the Mayor and Commissioners Pamatot, Giglotto, Klein and DesPain, did hear plaintiff's appeal on July 20, 1981. The City Council questioned Dr. Escobedo and Thomas Hall regarding the use of plaintiff's proposed building, the building plans and the timeliness of plaintiff's appeal, but a

transcript of the hearing clearly reveals that the council's paramount concern was whether Dr. Escobedo or any of his associates would be performing abortions in the City. Commissioners Pamatot and Giglotto made statements on the record reflecting their personal aversion to abortion. The hearing culminated in a motion by Commissioner Pamatot to uphold the Mayor's decision to deny plaintiff's building permit on the following grounds:

> "1. Appeal was not filed in compliance with the requirements of Sec. 16.20.010 of the Collinsville Municipal Code,
>
> 2. It is contrary to the general health, safety and welfare of the public in the following respects:
>
> (a) cause traffic problems
>
> (b) cause parking problems
>
> (c) cause crowd control problems

(d) create a public nuisance

(e) is contrary to public policy of this city

3. Applicant failed to comply with requirements of the BOCA Basic Building Code/1981, Sections 111.2; 111.3; 111.4; 111.5; 111.6; and 111.7."

The motion was seconded and unanimously passed by the City Council. Building Officials Conference of America Code (BOCA) provisions 111.2 through 111.7 as adopted by the City are as follows:

"**111.2 Form of application:** The application for a permit shall be submitted in such form as the building official may prescribe and shall be accompanied by the required fee as prescribed in Section 114.0.

111.3 By whom application is made: Application for a permit shall be made by

the owner or lessee of the building or structure, or agent of either, or by the licensed engineer or architect employed in connection with the proposed work. If the application is made by a person other than the owner in fee, it shall be accompanied by a duly verified affidavit of the owner or the qualified person making the application that the proposed work is authorized by the owner in fee and that the applicant is authorized to make such application. The full names and addresses of the owner, lessee, applicant, and of the responsible officers, if the owner or lessee is a corporate body, shall be stated in the application.

111.4 Description of work: The application shall contain a general description of the proposed work, its

location, the use and occupancy of all parts of the building or structure and of all portions of the site or lot not covered by the building or structure, and such additional information as may be required by the building official.

111.5 Plans and specifications: The application for the permit shall be accompanied by not less than two copies of specifications and of plans drawn to scale, with sufficient clarity and detail dimensions to show the nature and character of the work to be performed. When quality of materials is essential for conformity to this code, specific information shall be give to establish such quality; and this code shall not be cited, or the term 'legal' or its equivalent be used, as a substitute for specific information. The building

official may waive the requirement for filing plans when the work involved is of a minor nature.

111.6 Site plan: There shall also be a site plan showing to scale the size and location of all the new construction and all existing structures on the site, distances from lot lines, the established street grades and the proposed finished grades; and it shall be drawn in accordance with an accurate boundary line survey. In the case of demolition, the plot plan shall show all construction to be demolished and the location and size of all existing structures and construction that are to remain on the site or plot.

111.7 Engineering details: The building official may require adequate details of structural, mechanical and electrical

work to be filed, including computations, stress diagrams and other essential technical data. All engineering plans and computations shall bear the signature of the engineer or architect responsible for the design. Plans for buildings more than two stories in height shall indicate where penetrations will be made for electrical, mechanical, plumbing and communications conduits, pipes and systems and the materials and methods for maintaining the required structural integrity, fire resistance rating and firestopping."

We first turn to plaintiff's contention that the administrative decision of the City Council denying plaintiff's building permit is against the manifest weight of the evidence. It is undisputed that findings and conclusions of an administrative body on questions of fact

are held to be prima facie true and correct. Only if the findings are against the manifest weight of the evidence can they be set aside. (Fadler v. Illinois State Board of Education (1987), 153 Ill. App. 3d 1024, 1026, 506 N.E. 2d 640, 642.) A finding cannot be adjudged against the manifest weight of the evidence unless an opposite conclusion is clearly evidenced from the record. Rolando v. School Directors of District No. 125 (1976), 44 Ill. App. 3d 658, 661, 358 N.E. 2d 945, 947.

Upon an examination of the record, we cannot determine that the City Council's decision to deny plaintiff's building permit for lack of information was against the manifest weight of the evidence. In fact, plaintiff does not deny that its application failed to comply with BOCA provisions 111.2 through 111.7. The trial court held, and we agree, that plaintiff's application failed to

meet the requirements of the BOCA provisions as follows: (1) it failed to include a filing fee as required by section 111.2; (2) it failed to include the names and addresses of the officers of plaintiff corporation as required under section 111.3; (3) it failed to contain an adequate description of the use and occupancy of all parts of the building, as required by section 111.4; (4) it failed to include specifications and plans with sufficient clarity and detailed dimensions to show the nature and character of work to be performed, as required by section 111.5; (5) it failed to include a site plan scaled to show boundary lines and distances from lot lines, in violation of section 111.6; and (6) it failed to contain adequate plans for electrical, ventilation and plumbing systems in violation of section 111.7.

These violations, in addition to Dr.

Escobedo's repeated refusals to supply defendants with the missing information, were adequate reasons for defendants to decline issuance of the permit. Plaintiff claims that its noncompliance with the provisions was not the true reason its permit was denied, and that defendants refused to issue the permit solely or primarily because of an aversion to abortion. We have no doubt that several or perhaps all City Council members considered the abortion issue in deciding to deny plaintiff's application, and had plaintiff's application complied with all city ordinances, we would now be compelled to address the constitutional implications of defendants' actions. Plaintiff's application did not comply, however, so we need not address defendants' consideration of the abortion issue in their decision-making. As stated by our supreme court on numerous occasions,

constitutional questions will not be considered unless necessary to the disposition of the case. (Davis v. City of Chicago (1974), 59 Ill. 2d 439, 322 N.E. 2d 29; People v. Fleming (1971), 50 Ill. 2d 141, 277 N.E. 2d 872; see Ashwander v. Tennessee Valley Authority (1936), 297 U.S. 288, 80 L. Ed. 688, 56 S. Ct. 466 (Brandeis, J., concurring).) The constitutional issue in this instance is presented under section 1983 of the United States Code (42 U.S.C. §1983 (1979)). Questions specifically based on section 1983 need not be addressed unless necessary to the disposition of the case. (Cochenour v. Cochenour (8th Cir. 1989), 888 F. 2d 1244; Espino v. Besteiro (5th Cir. 1983), 708 F. 2d 1002.) As we have determined that the evidence supports defendants' actions of denying plaintiff's permit based on ordinance violations, we find it unnecessary to address

the constitutional issues plaintiff presents. We also need not address defendants' argument that plaintiff's appeal to the City Council was untimely, but instead we hold that defendants waived any time limitations by conducting the appeals hearing of July 20, 1981. Since the evidence supports defendants' decision to deny the permit based on BOCA violations, we affirm the trial court's decision in favor of all defendants based on this issue.

Finally, we uphold the trial court's decision not to issue a writ of mandamus to compel issuance of the building permit. In order to be entitled to a writ of mandamus, plaintiff must show a clear, unambiguous right to what is requested and that official action refusing what is requested is devoid of support. Anything less than strict and complete compliance with all necessary and

applicable provisions for building permits must result in a denial of a writ of mandamus. (People ex rel. Wordell v. City of Chicago (1978), 67 Ill. App. 3d 321, 326, 384 N.E. 2d 894, 898.) In this case, as we stated earlier, plaintiff's application was not in strict and complete compliance with all applicable provisions, in that it failed to comply with BOCA provisions 111.2 through 111.7. Therefore, the trial court properly denied plaintiff's request for a writ of mandamus to compel issuance of the building permit.

For the foregoing reasons, the judgment of the circuit court of Madison County is affirmed.

Affirmed.

LEWIS and HOWERTON, JJ., concur.

APPENDIX C

App. 24

Portions of the Non-Jury Trial Court Transcript Proceedings for the Circuit Court of Madison County, Illinois (4/18/88-4/20/88)

Portions of Melvin Heinecke's Testimony reads as follows:
(Tr. 131-173)

***

"Q. What do you do?

"A. I'm building inspector for the City of Collinsville.

"Q. As building inspector do you have any job titles or is that the sole job title?

"A. That's the sole job title, but I'm also a zoning administrator.

"Q. Okay. And how long have you held both of these positions?

"A. Building inspector around ten years; zoning administrator about nine.

"Q. So in 1980 and 1981 you were holding both of these positions?

"A. Right.

***

"Q. Now, after that was submitted you determined that this building was being built in a correct zoning area, did you not?

"A. Yes, sir.

"Q. And you went to see the mayor with it, did you not?

"A. Yes, sir.

***

"Q. When you took it to the mayor as I understand it the mayor told you not to issue that permit, is that correct?

"A. That's right.

"Q. The mayor didn't give you any reasons for that at that time, did he?

"A. No, sir.

"Q. And at that time you didn't give the mayor any reasons for not issuing the permit, is that correct?

"A. I guess I'll have to tell I sure did

because I recognized that drawing. That building was going to be built in Collinsville quite some time ago.

***

"Q. And so when the mayor told you not to issue the permit you took it back and put it in your desk drawer, did you not?

"A. In the cabinet.

"Q. In the cabinet. And you did nothing further with that application?

"A. No, sir.

***

"Q. And again you already knew that for the site that this building complied with the zoning?

"A. Yes, sir.

"Q. So without further ado and any further checking you took it to the mayor, did you not?

"A. Yes, sir.

"Q. And as I recall the discussion you had with the mayor, the mayor asked you why the application was under a different name, isn't that correct?

"A. That's right.

***

"Q. And on this time when you went in to see the mayor you didn't give him any reason for denying the permit, did you?

"A. No, sir.

"Q. And so then you took that and put it back in the cabinet with the first one?

"A. Yes, sir.

"Q. And did nothing further about it?

"A. No, sir.

"Q. And contacted no one?

"A. No, sir.

"Q. Neither the architect, the owner or contractor?

"A. That's right.

***

"Q. Then you call the owner, the architect or the contractor?

"A. Right.

"Q. What do you do when you call them then?

"A. We go over there and give them a copy of what we found and we want them to make the changes. They will send us it back and say we are making the changes.

"Q. And then what happens?

"A. Then they go ahead and we go ahead and issue the permit.

***

"Q. In fact in this discussion the mayor didn't even ask you if it complied with anything, did he, didn't even ask you?

"A. No, sir.

"Q. Nor at this time did he express any defects that he observed in the plans or in

the application?

"A. No, sir.

***

"Q. As you understand there is nothing different about those plans than there would be any other doctors medical building that you have seen during the course?

"A. You are referring to as a doctors office?

"Q. Yes, sir.

"A. No, sir.

"Q. In fact you approved a building permit for a Dr. Rallo?

"A. Yes, sir.

"Q. And was there any major difference between what Dr. Rallo was proposing to do in the way of his plans and building than this one?

"A. No, sir, not that I see.

***

"Q. As a matter of fact isn't it common practice in the City of Collinsville that the fees are not paid until the application is issued?

"A. That's right.

***

"Q. You won't find any in there because the City of Collinsville never requires that, do they?

"A. No.

***

"Q. As a matter of fact you get those kinds of application with great frequency, do you not?

"A. Not too often.

"Q. But you get them, don't you?

"A. We get them.

"Q. And you always issued permits, have you not?

"A. That's right.

"Q. And as far as the description on here it tells you it's going to be?

"A. A multi-tenant office buildi[illegible].

"Q. Right. That's as much of a description as you normally get, is it not?

"A. The first one says office building for doctors?

"A. Right.

"Q. This is the one that was rejected this one, the second one, is that right?

"A. That's the second; that's the first one.

"Q. All right. And you see the same thing in all of these, do you not, no more greater description in any of them, is there?

"A. No.

"Q. You never required any greater description from any of those other applicants, did you?

"A. No, sir.

***

"Q. In fact your mayor told you to bury it before you even figured out that it wasn't there?

"A. That's right.

***

"Q. So by utilizing a scale and a ruler you can tell exactly what the set lines are on the side and back, can you not?

"A. That's where I come up with these here.

"Q. With the scale there?

"A. They are supposed to have it on there.

"Q. But you can tell what it is, can you not?

"A. I can tell, sure.

"Q. In fact you wrote it in there yourself?

"A. That's right.

"Q. So you knew what it was.

"A. That's right. But that's not my job to go around scaling architect's drawings.

"Q. But you did it?

"A. I done that for my own use."

"Q. Okay. They are there for anyone to see, for anyone who can read one of these, is that correct?

"A. That's right. But I would turn it down for because it says 50 foot is the setback.

"Q. But that isn't why you turned it down?

"A. No.

***

"Q. The first sentence which reads, "the building official may require adequate details of structural, mechanical and electrical work to be filed."

"A. Right.

"Q. It doesn't say shell facilities?

"A. It doesn't say shell.

"Q. You never brought that to anyone's attention either, did you?

"A. No, sir.

***

"Q. Now correct me if I'm wrong now, all of these defects we have been talking about and violations of code, those are things you determined after Mayor Brombolich told to you put them in the cabinet, isn't that correct?

"A. Yes, sir.

"Q. Because up until that point you hadn't done anything, the decision was made to turn it down before that was even discovered, isn't that correct?

"A. Yes, sir.

***

"Q. And as far as you know neither you nor anyone else from the City of Collinsville

ever raised any of these objections with either the architect, the owner or the contractor on any of these problems?

"A. As far as I am concerned I never. I seen the architect when he brought them in or he just dropped them off.

***

"Q. Okay. What was your involvement with that?

"A. Well, we knew it was going to go to court so I more or less sat down and made a list in here, looked at the drawings and made a list of what I figured wouldn't meet the codes.

***

"Q. And were you involved in the listing of code violations back at that time?

"A. I probably was before the meeting, that's how they got them, I imagine I was.

***

"THE COURT: In this particular case do you remember looking at the set of plans before you gave the permit to the mayor?

"THE WITNESS: I looked at them myself, yes, ma'am.

"THE COURT: Did you note any defects at the time you looked at it?

"THE WITNESS: No, sir.

***

"THE COURT: You didn't voice any statement to the mayor about any defects?

"THE WITNESS: No, ma'am.

***

"Q. Now, let's say Mr. Hall, the architect in Exhibit 2, would have contacted you right after you talked to the mayor, what could you have told him except that the mayor said not to give him the permit?

"A. That's all I could have told him.

***

"Q. And every application that's been issued from 1980 forward it will show a paid receipt stamped on there subsequent to the date of the application?

"A. Supposed to, yes, sir.

Portion of Gary Apoian's testimony read as follows:

(Tr. 4-5)

***

"A. We had applied for a building permit -- Archview Investments had applied for a building permit with the City of Collinsville. That permit was denied. We processed our appeal of that denial to the Zoning Board of Appeals. I received a telephone call from Mr. Taylor indicating that we improperly filed our appeal before the Zoning Board of Appeals, that this wasn't a zoning matter and that we should withdraw our appeal before that body and instead file before the City Council.

One of my concerns was that there was a five day requirement that had to be met that was jurisdictional. Mr. Taylor indicated that they would waive that five day requirement...

Portions of M. Thomas Hall's testimony reads as follows:

(Tr. 69-72)

***

"Q. And did the building that you designed and the site where it was to be located, are those all in compliance with the zoning ordinance with the City of Collinsville at the time you designed it?

"A. To the best of my knowledge at that time they were.

"Q. In fact did anyone ever tell you that was not?

"A. No, they didn't.

"Q. Were you familiar at the time you

designed this with the building codes of the City of Collinsville?

"A. Yes, I was.

"Q. And what was that building code at that time?

"A. I believe it was the BOCA Code.

"Q. Would you tell us what the BOCA Code is?

"A. The BOCA Code is one of two or three national building codes which communities opt to adopt as their means of enforcement rather than each community writing their own building code.

"Q. And the City of Collinsville had adopted the BOCA Code, is that correct?

"A. I believe so.

"Q. And did you go through the BOCA Code to determine if you plans were in compliance with the BOCA Code that the City of Collinsville had adopted?

"A. Yes, to the best of my ability.

"Q. What was your opinion as to whether or not it was in compliance?

"A. It was my opinion that it was in compliance with the building code at that time.

"Q. At any time has anyone ever told you that it was not in compliance in any respect.

"A. No, they have not.

"Q. Mr. Hall, I'm going to show you what has been previously marked as Plaintiff's Exhibit No. 1 for identification, can you tell us what that document appears to be?

"A. Yes. It's a building permit application.

"Q. And for what?

"A. For a medical office building for Dr. Escobedo.

"Q. And did you prepare take document?

"A. Yes, I did.

"Q. Did you file it with the City of Collinsville?

"A. Yes.

"Q. To your knowledge whatever became of that application, was it approved?

"A. No, I don't know. I have no knowledge of whether it ever was or was not approved.

"Q. You are sure no one ever communicated back to you one way or another?

"A. Not that I recall.

Portions of Gene J. Brombolich's testimony reads as follows:

(Tr. 245-280)

***

"Q. The last sentence you stated that, "if in fact the building is to be used as an abortion clinic it would be contrary to the general health, safety and welfare of public to issue the building permit." You made that

statement, did you not?

"A. Yes, sir.

"Q. Now, there was nothing in that letter pertaining to any particular sections of the BOCA Code, were there?

"A. No, sir, I don't believe so.

"Q. There was nothing in that section pertaining to any sections of the zoning ordinances for the City of Collinsville, was there?

"A. No, sir, I don't believe so.

"Q. There was nothing in that section pertaining to any sections of the zoning ordinances for the City of Collinsville, was there?

"A. No, sir. That was not the reason for that letter.

"Q. Wasn't the reason you turned them down?

"A. No, sir, not at that time.

"Q. Because the violation of that code or violation of the zoning ordinance?

"A. It was in violation for lack of information, sir.

***

"Q. My question was, prior had you actually personally looked at these plans, Exhibit 23?

"A. I didn't hear you ask that question, sir, I'm sorry. Was I familiar with the deficiencies, yes, sir, I was.

"Q. The question, sir, again, did you look at those plans?

"A. No, sir. I don't believe I looked at the plans physically.

***

"Q. At that particular time had there been an examination of the BOCA Code and a list made of any deficiencies or anything of that kind?

"A. No. At that time there had to be discussions, talk, you know, you are in the same office, you know, you have these type of day-to-day conversations...Prior to and after the second application and prior to the appeal process we had more detailed discussions with Mr. Taylor as to specific zoning and specific BOCA Code violations at that time and in preparation for the public hearing and then following the public hearing in preparation for communications back to the applicants.

***

"Q. So with regard to the second application, did you make any efforts to get additional information?

"A. Yes, sir. Again, I asked the Detective Swindle who had been involved in the original investigation as to the applicant, the person of the first application, I asked Detective Swindle if at the time if he would

inquire as to who was Archview Investments and where I could contact the proper officers of that corporation.

APPENDIX D

App. 46

CITY OF COLLINSVILLE
125 SOUTH CENTER STREET
COLLINSVILLE, ILLINOIS 62234
618-344-5252

March 23, 1981

Archview Investment, Inc.
13975 Manchester Road
St. Louis, County, Missouri

RE: Application for Building Permit
by Archview Investment, Inc.

Gentlemen:

The City declines to issue a building permit pursuant to the above application.

Investigation conducted by the City concerning the factual information contained in the application has been met with resistance, which includes lack of knowledge, repeated referrals to other people who have little or no knowledge, outright refusal to answer legitimate inquiry, the use of secretary without financial interest as incorporator, etc.

As Mayor of the City, I feel that it is not in the best interest of the City to issue the permit.

It is my belief, based upon both application and the investigations conducted by the City, that the applicant is attempting

to conceal from the citizens of Collinsville the real use for which the building is intended, and that the applicant is causing an additional financial expense upon the taxpayers of the City by failing to cooperate in the investigations. If in fact the building is to be used for an abortion clinic, it would be contrary to the general health, safety and welfare of the public to issue the building permit.

Yours truly,

CITY OF COLLINSVILLE

Gene J. Brombolich
Mayor

Supreme Court, U.S.
FILED
OCT 2 1992
OFFICE OF THE CLERK

NO. 92-435

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

ARCHVIEW INVESTMENTS, INC., an Illinois corporation,

Petitioner,

vs.

CITY OF COLLINSVILLE, ILLINOIS a municipal Corporation; THE HONORABLE GENE J. BROMBOLICH, Mayor of the City of Collinsville; LOUIS JACKSTADT, City Clerk of the City of Collinsville; MELVIN HEINECKE, Zoning Administrator of the City of Collinsville; ROBERT L. DESPAIN, WILLIAM F. GIGLOTTO, GARY KLEIN, MELVIN P. PAMATOT, Collectively Councilmen Comprising the City Council of the City of Collinsville, Illinois,

Respondents.

BRIEF FOR RESPONDENT DESPAIN

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STATUTE

Collinsville Municipal Code 16.20.010 §16.20.010: "Any person not satisfied with the decision or actio nor failure to act of any officer on an application for a permit or for inspection or approval, or application for a permit or for inspection or approval, or any other administrative function in the administrative procedure provided in this chapter, may appeal within five days to the council. Such appeal shall be in writing, filed with the city clerk, and shall state briefly the alleged error in the decision or action or failure to act. The city clerk shall present the appeal to the council at its next regular meeting. The council may affirm or reverse, correct or remand the decision so appealed." (Prior code §6.25)

NO. 92-435

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

ARCHVIEW INVESTMENTS, INC., an Illinois corporation,

Petitioner,

vs.

CITY OF COLLINSVILLE, ILLINOIS a municipal Corporation; THE HONORABLE GENE J. BROMBOLICH, Mayor of the City of Collinsville; LOUIS JACKSTADT, City Clerk of the City of Collinsville; MELVIN HEINECKE, Zoning Administrator of the City of Collinsville; ROBERT L. DESPAIN, WILLIAM F. GIGLOTTO, GARY KLEIN, MELVIN P. PAMATOT, Collectively Councilmen Comprising the City Council of the City of Collinsville, Illinois,

Respondents.

BRIEF FOR RESPONDENT DESPAIN

TO: The Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States

STATEMENT OF FACTS

Respondent, Robert Despain, is a party to this litigation only by virtue of his attendance at a hearing on the Petitioner's Appeal for a building permit to the City Counsel of Collinsville, Illinois. As an elected member of the Council, it is true that Mr. Despain listened to the testimony proffered at the hearing, and joined in the vote to deny Petitioner's building permit. However, Mr. Despain's vote was based upon legitimate concerns raised at the hearing: the timeliness of the Petitioner's appeal to the Council, and Petitioner's failure to comply with the BOCA code.

While Mr. Despain will address only those factual inaccuracies and omissions pertinent to his very limited involvement in the process of reviewing Petitioner's application for the building permit, Petitioner's description of earlier events also contain some important omissions and undoubtedly will be addressed by co-respondents.

On March 23, 1991, the Mayor denied the Petitioner's

building permit and communicated that denial to Petitioner by way of a letter in which the Mayor stated that he was denying the application because of the applicant's refusal to cooperate and provide additional necessary information. (Petitioner's Appendix D, pages 46 – 47.) Respondent Despain was not privy to, nor contemporaneously aware of, any of the events leading up to the Mayor's decision. Mr. Despain was not aware of Dr. Escobedo's first application, second application, or any communications between the Mayor, the building inspector, Dr. Escobedo, or other representatives of the City or Archview.

While the facts to this point do not bear directly on the conduct of Respondent Despain, Petitioner's refusal to cooperate with the City's attempts to obtain additional information was discussed at length during the Council hearing. The trial judge perceptively noted that Petitioner, "created a situation of distrust and suspicion which contributed to the decision of the City Counsel against the issuance of the building permit."

Plaintiff's allegation that Respondent Despain violated Petitioner's constitutional rights must be judged solely upon a review of Mr. Despain's conduct at the Council hearing. Respondent Despain refers the court to the entire transcript of the proceedings of the hearing (Respondent's Appendix A). At the conclusion of the hearing, Respondent Despain voted to deny the building permit. Commissioner Pamatot moved that the Council concur with the position of the Mayor, and deny the building permit on three grounds: that the appeal was not timely filed, that the business to be operated in the building would be contrary to the general health, safety, and welfare of the public, and that the applicant failed to comply with the requirements of BOCA. At the time of his vote, Respondent Despain made a special point of saying that his vote was based upon only two of the three grounds, and not the "emotional" issue. (App. A, p. 54) Thus, Mr. Despain agreed with the decision to deny the building permit because of the Petitioner's failure to file a timely appeal and failure to comply

with BOCA.

The testimony at the Council hearing supported Mr. Despain's vote on these points, even though petitioner inaccurately states that the only thing discussed at the Council meeting was whether abortions would be performed in the proposed building. (See Petitioner's Brief at page 13.) In fact, the original transcript of the hearing is only twenty-two pages long and yet, four of those pages, or approximately one-fifth of the proceedings dealt entirely with the issue of whether Petitioner had filed a timely appeal to the City Counsel. (App. A, pp. 20-25) On the evidence presented, Mr. Despain could reasonably believe that Petitioner had failed to file a timely appeal and that the failure to file the timely appeal precluded any further proceedings on the question of whether the building permit should be denied.

Much of the Council hearing was consumed with testimony of the intended use of the building and the Petitioner's failure to adequately define the use on the building permit application. (App.

A, pp. 15–20, 25–44) Petitioner characterized this testimony as solely pertaining to a concern that the building would be used for abortions. Regardless, according to the testimony presented at the Council hearing, the BOCA code required disclosure of the intended use of the building and further required disclosure of the identity of the responsible officers of the corporations. (App. A, pp. 12,13) Since this information was lacking in the application and since repeated efforts to discover the information were rebuffed, the counsel had no obligation to grant the permit over the denial by the Mayor. This is particularly so since those who testified on behalf of Petitioner at the Council hearing did not deny that the application contained violations of BOCA.

The evidence pertinent to Respondent Robert Despain's conduct can only lead to one conclusion: that Respondent Despain in particular did not violate Petitioner's constitutional rights by acting arbitrarily or capriously. Moreover, the evidence supports confirmation of the trial court's finding that Respondent Despain

was entitled to qualified immunity since his actions were objectively reasonable and were not contrary to any known constitutional right of the Petitioner.

ARGUMENT I

THE ILLINOIS APPELLATE COURT DID NOT ERROR IN ITS FINDING THAT THE CONSTITUTIONALITY OF THE CITY'S ACTIONS CAN NOT BE CONSIDERED BECAUSE PETITIONER DID NOT ABIDE BY THE BOCA REQUIREMENTS.

In Count V of the Second Amended Complaint, Petitioner Archview sought compensatory and punitive money damages against Defendant Despain (and the other individual city council members) for malicious deprivation of constitutional rights under 42 USCA, §1983.

The Trial Court found that Petitioner Archview failed to fully comply with the then applicable City Ordinances of Collinsville regarding its building permit application process. The Trial Court specifically found (a) that "the application of the City of Collinsville's ordinances regarding building permits was reasonable"; (b) that the actions of the City Council were no "mere

subterfuge for what was in reality a discriminatory decision";[1] (c) that the Court considered "all the facts" including the "evasiveness of Dr. Escobedo", his refusal to "provide requested information", and the fact that he did not "fully comply with all the applicable ordinances"; and (d) that the "building plans were clearly deficient".

The Illinois Appellate Court correctly found that the constitutionality of the City's actions could not be considered because the Petitioner did not abide by BOCA requirements. The court's analysis turned on the fact that constitutional questions will not be considered unless necessary to the disposition of the case. Davis v. City of Chicago, 59 Ill. 2d 439, 322 N.E.2d 29 (1974); People v. Fleming, 50 Ill. 2d 141, 277 N.E.2d 872 (1971); Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 80 Led. 688, 56 S.Ct. 466 (Branders, J., concurring) (1936). In particular,

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[1] This language is an essential holding from the decision of Bossier City Medical Suite, Inc., v. City of Bossier City, 483 F.Supp. 633 (W.D. La. 1980), which is a crucial, parallel case, and which the Trial Court relied upon in its decision.

the court noted that this specifically applies to questions based on §1983. Cochenour v. Cochenour, 888 F.2d 1244 (8th Cir. 1989); Espino v. Besteiro, 708 F.2d 1002 (5th Cir. 1983).

For instance, in Cochenour, 888 F.2d at 1246, the court stated that for a §1983 claim, causation is a necessary element. The court refused to consider the §1983 constitutional claim because the cause of the property loss was the prior action of the property owner, not the state or county procedures. Id. Similarly, in the case at hand, the mayor and county board's views on abortion were not the cause of the denial of his permit. The Council, Trial and Appellate courts correctly found the cause was the petitioner's refusal to properly fill out the application. Petitioner failed to provide requested information, he did not fully comply with all the applicable ordinances and the building plans were deficient. (Petitioner's Brief, App. 19). Due to the inadequate application, the constitutionality of the council's actions need not be reached.

The cases cited by the petitioner to support on §1983 claim are all factually distinguishable from the case at hand. In the cases cited by petitioner, the permit applicants met the legal requirements contained in the ordinances, whereas here the Council and the Trial Court found the petitioner did not meet those requirements.

Petitioner Archview relies on Littlefield v. City of Afton, 785 F.2d 596 (8th Cir. 1986). While petitioner suggests it has a constitutionally protected property interest in its building permit, the Littlefield decision makes it clear that an applicant for a "building permit has a constitutionally protected property interest . . . conditioned only by compliance with the ordinances." (emphasis added). Id. at 602. In that case the court found in favor of the permit applicants because they had complied with, "all the legal requirements contained in the ordinances." (emphasis in original). Id. In this case, the Council, Trial Court, and Appellate Court agree that plaintiff's application failed to comply with BOCA provisions 111.2 through 111.7. Due to these violations, petitioner

does not have a constitutionally protected interest to have the building permit issued.

Second, plaintiff relies on Southern Co-Op Development Fund v. Drigger, 696 F.2d 1347 (1983). Similarly, in Southern, unlike the case at hand, the applicant met the requirements of the ordinance. After mentioning that fact numerous times throughout the opinion, the court focused on the "narrow question" of whether an additional requirement could be considered which was not included in the ordinance. The court held that any discretion which the County Commission may have had to deny an application "vanished" when the "property owner had done all the law required of him." Southern, 1696 F.2d at 1352. But here, due to the failure to meet the legal requirements, the petitioner does not have a constitutionally protected property interest under §1983.

Even if the United States Supreme Court determines that the constitutionality of the council's decision must be reviewed, it was not arbitrary and capricious. In Scudder v. Town of Greendale,

Ind., 704 F.2d 999, 1002 (1983), the court defined "arbitrary" as a decision was reached "without adequate determining principle or was unreasoned." Id. In Scudder, a requirement of the ordinance was "that every building hereafter erected shall be located on a lot which fronts on a street." Id. at 1003. The court granted the city summary judgment because the lot upon which the plaintiff desired to build did not front a street. Id. The Scudden court held that strict enforcement of an otherwise valid city ordinance was not "arbitrary". Id. Although petitioner relies on this case in its argument, it is obvious that the case supports respondent's argument. In the case at hand, the City Council determined that certain BOCA requirements were not met because petitioner failed to provide enough information. (App. A, p. 53) The Trial Court appropriately found that the council was only requiring compliance with all city ordinances.

The plaintiff relies on Bello v. Walker, 840 F.2d 1254 (3d Cir. 1988), stating in its Petition for Writ of Certiorari that the case

is "a particularly worthy discussion on the issue of arbitrary and capricious." (Petitioner's Brief p. 25). Again, this decision is absolutely distinguishable from the case at hand. First, the council did not claim that the applicant had failed to meet the legal requirements of the ordinance. Second, the Bello court remanded the case for factual findings since plaintiff had alleged facts from which the fact finder "could reasonably conclude that certain council members . . . improperly interfered with the process by which the municipality issued building permits." Id. at 1129. The court concluded that the crucial underlying issue of the municipality's decision is "the factfinder's role to resolve." Id. at 1130. In this case, the factfinders resolved the issues and determined that Respondent Despain acted rationally.

Plaintiff argues that " . . . any objective reading of the transcript of that [Council] hearing of July 20, 1981, indicates that compliance with the ordinances of the City of Collinsville was not the primary motive for the decision of the Council." (Petitioner's

Brief, p. 30) But as Respondent Despain articulated at the time the vote was taken, he was motivated to vote against granting the building permit because of the evidence introduced at the hearing that petitioners had failed to comply with legal requirements. (App. A, p. 54) The petitioners failed to comply with certain BOCA codes and regulations and the petitioners failed to appeal the denial of the building permit in a timely fashion. (App. A, p. 54)

Nonetheless, plaintiff goes on to claim that there was no evidence of BOCA code violations presented at the council meeting. (Petitioner's Brief, p. 30–31) This simply is not true. At least two deficiencies were discussed: Failure to describe the use of the building and failure to disclose the names of the officers of the corporate applicant. (App. A, pp. 5–20, 25–44; 12, 13) Certainly, not every member of the city council can be expected to be an expert in what the BOCA code requires. But, when the mayor pointed out these areas of deficiency in the application at

the council hearing and reminded the petitioners about failed to attempts to ascertain the data, the petitioners' witnesses did not deny that BOCA required that they supply that information, nor did they deny that representatives of the city had been thwarted in their attempts to obtain that information at least until the time of the council meeting. (App. A, p. 12–14)

Finally, it might also be noted that the plaintiff is inviting a situation in which every routine local building code decision may become subject to prolonged federal constitutional litigation. The U.S. District Court for Northern Illinois, in Christian v. Village of Maywood, 656 F.Supp. 367 (N.D. Ill. 1987) has properly stated that, "We also point out to plaintiffs that a building code dispute is ordinarily 'a matter of peculiarly local concern' in which a viable federal claim is rarely found." (656 F.Supp. at 370), citing Albery v. Reddig, 718 F.2d 245 (7th Cir. 1983).

In conclusion, the Appellate Court correctly found that the §1983 claim need not be considered because the evidence

supported Respondent Despain's action of denying plaintiff's permit based on BOCA violations. Even if the U.S. Supreme Court decides to address the constitutional issue, Respondent Despain's decision was not arbitrary and capricious because of the obvious ordinance violations and the petitioners repeated refusals to supply the City with the missing information.

ARGUMENT II

THIS COURT NEED NOT ADDRESS PETITIONER'S DUE PROCESS ARGUMENT SINCE PETITIONER FAILED TO SEE THAT THE ISSUE WAS "PRESSED OR PASSED" UPON THE ISSUE IN STATE COURT.

Petitioner alleges that Mayor Brombolich's original denial of the building permit on March 23, 1981 was based on reasons other than the BOCA Building Code violations. (Petitioner's Brief p. 36). Petitioner alleges that it did not receive notice that the application had been denied on the basis of any alleged BOCA defects in the permit. (Petitioner's Brief p. 39). Petitioner alleges denial of due process because of an alleged failure to receive notice

of the specific BOCA violations at the administrative appeal to the City Council. (Petitioner's Brief, p. 39).

The United States Supreme Court should not even review the due process issue. The United States Supreme Court will not decide claims "not pressed or passed upon" in the state court. Illinois v. Gates, 462 U.S. 213, 76 L.E.2d 527, 536, 103 S.Ct. 2317 (1983). The longstanding rule that the Supreme Court will not consider such claims creates, at the least, a weighty presumption against review. Health v. Alabama, 472 U.S. 82, 88 L.E.2d 387, 393, 106 S.Ct. 433 (1985). In Gates, the state court had held that an application for a warrant to search was inadequate. Id. at 534. In their brief to the United States Supreme Court, petitioners for the first time addressed the issue of whether the exclusionary rule should be modified. Id. at 535. The Supreme Court held that it could not decide issue because it was not "pressed or passed upon below." Id. at 538. Among other reasons, the court noted that questions which were not raised below were very likely to have an

inadequate record, and that due regard must be given to the state court. Id. at 537.

Likewise, in the case at hand the first time the issue of lack of due process for failure to receive notice was raised was in the petition for rehearing to the Illinois Court of Appeals. No mention of this issue can be found in the decision of the Trial Court, in the notice of appeal, the briefs, or on the decision of the Court of Appeals. The general practice of the Illinois Court of Appeals is not to consider issues for the first time on appeal. Western Gas & Sur. Co. v. Brochu, 86 Ill.Dec. 493, 475 N.E.2d 872, 105 Ill.2d 486 (Ill. 1985).

When the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to lack of proper presentation in the state court unless the aggrieved party in this court can affirmatively show to the contrary. Bd. of Dirs. of Rotary Int'l. v. Rotary Club, 481 U.S. 537, 95 L.E.2d 474, 487, 107 S.Ct. 1940 (1987). In Rotary the appellants claimed a

federal statute was unconstitutionally vague and overbroad. Id. at 487. Appellants did not present the issue squarely to the state court until they filed their petition for rehearing with the Court of Appeals. Id. The Court of Appeals denied the petition without opinion. Id. The California Supreme Court denied appellants' petition for review. Id. at 483. The United States Supreme Court declined to review the question because the appellants made no showing that the omission was not due to improper presentation in the state courts. Id. at 437.

Likewise, in the case at hand, the petitioners did not present the issue of denial of due process due to lack of notice squarely to the state courts until they filed their petition for rehearing with the Illinois Court of Appeals. The Court of Appeals denied the petition without opinion. Likewise, the Illinois Supreme Court denied appellants' petition for review due to the fact that petitioner has not shown affirmatively that the issue has been passed or pressed upon by state court, the United States Supreme Court

cannot review the issue.

Besides, petitioners did have notice of the local code violations. In his letter of March 23, 1981 Mayor Brombolich sent a letter to Dr. Escobedo denying the permit in part because the city was unable to discover pertinent information that was missing from the face of the application. (Petitioner's Brief, App. 46) Of course, it is the BOCA provisions which require, in part, that certain information appear on the building permit application including data identifying information about the owner of the property and the identity of the officers, if the owner is a corporation. (App. A, pp. 12,13) Moreover, no statute or ordinance required that the mayor notify the applicant of all bases for denying the permit. Certainly, there is no constitutional duty to do so. Obviously petitioners were not too concerned about their application deficiency since they made no effort to contact the building inspector, the mayor or any other member of the City Council in an attempt to determine exactly what was wrong with the

application.

Moreover, as regards the Respondent Robert Despain, he certainly cannot be faulted for any failure to give the petitioners notice of the BOCA code violations prior to the council hearing. Respondent Despain had absolutely nothing to do with the denial of the building permit application or with notifying the petitioner of the reasons for the denial.

ARGUMENT III

A. THIS COURT NEED NOT ADDRESS PETITIONER'S ARGUMENT THAT THE COUNCIL HEARING SHOULD NOT HAVE BEEN A DE NOVO PROCEEDING SINCE PETITIONER FAILED TO SEE THAT THE ISSUE WAS "PRESSED OR PASSED" UPON IN STATE COURT.

Petitioner alleges that the City Council's sole function was to determine whether Mayor Brombolich's decision was contrary to the manifest weight of the evidence (Petitioner's Brief p. 40). Petitioner alleges that the only evidence which can be considered

by the City Council was Mayor Brombolich's alleged reasons for denying the permit, and not any building code violations. (Petitioner's Brief, p. 40)

This is the first time petitioner raises this argument. For the reasons set forth in Argument II of Respondent's Brief, this Court should not review the issue of whether the Council should have considered evidence not relied upon by the mayor. Whether proceeding with a de novo hearing was appropriate pursuant to administrative law was not directly "pressed or passed upon" in the state court. Illinois v. Gates, 462 U.S. 213, 76 L.E.2d 527, 536, 103 S.Ct. 2317 (1983).

B. THE COUNCIL PROPERLY PROCEEDED WITH A HEARING DE NOVO.

Petitioner misstates the law in City of Rockford v. County of Winnebago, 134 Ill. Dec. 246, 253, 542 N.E.2d 423, 186 Ill. App. 3d 303 (1989), when he claims that the role of a reviewing body on administrative review is limited to a determination of

whether the agency's decision is contrary to the manifest weight of the evidence. (emphasis added) (Petitioner's Brief, p. 40). Petitioner argues that since the mayor's decision was based on something other than BOCA code violations, the City Council should not have heard evidence on code violations. (Petitioner's Brief, p. 41).

The proper interpretation of Rockford, 542 N.E.2d at 432 is that when a court reviews an agency's decision, the standard for review is whether the agency decision was contrary to the manifest weight of the evidence (emphasis added). In Rockford, the appellant appealed the decision of Winnebago County Board (WCB) to the Illinois Pollution Control Board (PCB) and then to the Court. Id. at 246. The Illinois Supreme Court held that the lower court's role was to determine whether PCB's decision was contrary to the manifest weight of evidence. Rockford did not address whether the appeals prior to reaching court are to be reviewed de novo.

To determine whether the City Councils' review of the mayor's decision is de novo or by the manifest weight of the evidence, one must look to the statute giving the council authority to act. An agency, being a creation of statute, has only those powers specifically conferred on it. Reiter v. Neilis, 81 Ill. Dec. 110, 113, 466 N.E.2d 696, 125 Ill. App. 3d 774 (1984). For example, the Industrial Commission must allow new evidence to be introduced upon review as stated in its statute. Cole v. Industrial Comm'n., 116 Ill. Dec. 866, 519 N.E.2d 1081, 166 Ill. App. 3d 406 (1988). However, the Illinois Human Rights Commission must accept a hearing officers findings unless it is contrary to the manifest weight of the evidence. Board of Regents v. Human Rights Comm'n, 142 Ill. Dec. 632, 552 N.E.2d 1373, 196 Ill. App. 3d 187 (1990).

The Collinsville Municipal Ordinance §16.20.010 does not provides that "any person not satisfied with the decision . . . may appeal within five days to the council. . . . The city clerk

shall present the appeal at its next regular meeting. The council may affirm or reverse, correct or remand the decision so appealed." Since the ordinance does not specifically state the nature of the review, whether de novo or manifest weight of the evidence, the appeal is deemed to be de novo. 17 Amber 2d Administrative Law §546 (1962). Moreover, since powers of the council on appeal are quite broad, it makes sense that the council review would be de novo.

ARGUMENT IV

THE FINDINGS OF THE LOWER COURT HAVE A BASIS IN FACT.

Petitioner complains that the Illinois Supreme Court and Illinois Court of Appeals "misapprehended or misconstrued" key facts. However, the facts relied upon by the courts of appeal were appropriately determined from the record. Petitioner first criticizes the Court of Appeals assessment that, "The City was unable to discover pertinent information missing from the face of the

application." (Petitioner's Brief, page 42) The mayor's letter of March 23, 1981 explained that the information contained in the application was inadequate, and that the city was unable to discover the information. (Petitioner's Appendix D, pages 46 – 47) The mayor noted as follows: "Investigation conducted by the City concerning the factual information contained in the application has been met with resistance, which includes lack of knowledge, repeated referrals to other people who have little or no knowledge, outright refusal to answer legitimate inquiry . . ." In addition to the mayor's letter the Court of Appeals also had the testimony of the witnesses appearing at the council hearing on July 20, 1981. At that time, there were lengthy discussions about the failure of the application to adequately describe the proposed use of the building as well as missing information as to the identity of the owners. Thus, the Court of Appeals certainly did not misconstrue the facts as indicated by the record.

Petitioner claims that the Court of Appeals misstated the

facts when it found that Dr. Escobedo repeatedly refused to supply the city with missing information. (Petitioner's Brief, page 43.) The record supports that there were at least several contacts with Dr. Escobedo and representatives of his corporation, Archview Investment Company, to get information concerning the use of the building and identity of the owners of the building. (App. A, pp. 12,13) Petitioner even conceded that there was an inquiry as to the ownership of Archview. Nevertheless, petitioner argues that the court should discount these inquiries because they were only made with respect to the first building application and not the second. This is not true. The inquiries were made after the second application was submitted. (App. A, pp. 12–13)

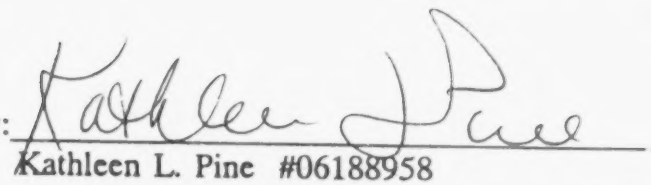
CONCLUSION

This Court should deny the Petition for Writ of Certiorari on the claims against the Respondent, Robert Despain. Mr. Despain's involvement in the denial of the building permit was

limited to assimilating the information provided at the council meeting on July 20, 1981 and doing his best to render a correct decision. A review of the transcript of that hearing leaves no doubt that the council members were presented with quite a bit of data upon which they could conclude that petitioners had failed to timely appeal the denial of the building permit and failed to submit an application that complied with the BOCA requirements. Regardless of whether the appeal was timely or had been waived, and regardless of whether there actually were BOCA code violations, Mr. Despain was certainly justified in believing this to be the case. Thus, his decision was not arbitrary and capricious but based upon evidence produced at the hearing. Moreover, Mr. Despain was the only council member who indicated that his decision to deny the building permit was not based upon the "emotional issues," that is, whether abortions would be performed

in the building. At a minimum, Mr. Despain is entitled to qualified immunity.

SANDBERG, PHOENIX & von GONTARD, P.C.

By: 

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APPENDIX A

Mayor Brombolich opened the meeting with the Pledge of Allegiance to the Flag. Mayor Brombolich – The purpose of this meeting is an appeal of a decision to deny a building permit involving a facility on Pine Lake Road. I would like to make a statement as to how we are going to conduct this meeting. I would like to do this before any of the appeal. First of all this hearing the appeal of a City action will be treated as an argument as to why the petitioner appealing, believes the Office of the Mayor made some kind of error in decision to deny an application for a buiiding permit to Archview Investments Inc. The petitioner should specify the error and will be allowed to present his reasons why the council should overrule the Mayor. In doing this he can refer to those points of the evidence he believes to be material to his argument. The council members may question the person presenting the argument. After the person appealing makes his argument, any objecting views will be given a brief opportunity to present their side after proper identification. The chair reserves the right to restrict re – points of view. If objector's position is presented the person appealing will be given a short, will be given a short rebuttal period. The rebuttal does not include new or different issues, but is confined to rebutting new points raised in the objector's arguments. The council may vote at the end of the argument. At this time I would like to add anyone in the audience that plans to take part in the hearing – make any kind of testimony – to stand raise their right hand so I can swear them in. Secondly the attorney for the petitioner will not be required to be sworn in – because his side will not be testimony – but arguments. So anyone in the audience that plans to take part in this hearing by making a public statement if you will stand and raise your hand I will swear you in myself. Right now.

Commissioner DesPain – Mr. Mayor, do you think anyone who thinks its possible they may, that they should be sworn in even tho they don't plan to specifically.

Mayor Brombolich – Anyone that may possibly give testimony this evening, stand up raise your hand and I will swear you in.
"Do you swear that the testimony that you give will be the truth so help you God", Say I Do. Thank you. Is the petitioner ready to address the Council?
Yes – My name is Gary Apoian, I am an Attorney with offices located in East St. Louis, Illinois, I represent Archview Investments Inc. As the gentleman has already stated, this is an appeal before the City Council based upon my client submitting an architectural plan for a building located at the intersection of Pine Lake and Vandalia which is also Highway 40 I believe. This area of the proposed building is located in a B–1 zoning district. I would state to the council that on the 10th day of March, 1981 Archview Investments Inc. submitted a plan, the application was secured from the City Clerk it was prepared, various plans, architectural drawings were attached, prepared by Mr. Thomas Hall who is present tonight and has been sworn in. Various structural drawings were also prepared under the direct supervision of Mr. Hall. It is our position tonight in reviewing both Chapter 16 of the Collinsville City Ordinance and Chapter 19 of the Zoning Ordinance that all the plans which were submitted together with the application were in strict compliance and conformity with the Ordinance and we are well aware of the fact the Ordinance, as it pertains the particular Chapter 16 makes reference to BOCA building codes and other pertinent building codes of the City of Collinsville would adopt. At all times we complied with those building codes, we submitted the plans together with the architectural drawings and structural drawings. On March 23rd, 1981 the Mayor of the City of Collinsville declined to issue the building permit. It is our position here tonight, after reading the pertinent provisions of the Ordinances of the City of Collinsville that the only basis for denying that building permit would be –. A. that we were not in conformity with the proper zoning which in this case was B4, or secondly – that the architectural and structural

drawings were not in conformity with the existing building codes which the City of Collinsville has adopted. In the Mayor's denial letter which is attached to the appeal which we filed before this body and is Exhibit #1, in that denial letter nowhere does the Mayor state that the reasons for the denial are that we do not comply with the zoning, altho there is language in the Exhibit that would indicate that he was refering to zoning types of situations. We have reviewed Chapter 19, which involves zoning, we have doubled checked and rechecked and we were in conformity with the zoning provisions. Nowhere in the Mayor's denial letter which is dated March 23rd, 1981 does he state that the reasons for the denial of the permit was that we did not conform with the existing building permits - the BOCA provisions. Archview Investments Inc. hired Mr. Thomas Hall who is a certified architect and engineer, he followed the procedure which he has followed in many instances where he has been employed to prepare building plans and attempt to receive building permits. And after conference with him we still could not find any problem with our permit or our plans. It is our position that the denial of the permit by the Mayor was improper at least - at least we would be entitled to know why we were denied as it pertains to the existing ordinances of the City of Collinsville and it is our position that it is only those reasons - those reasons alone that can be the basis for denying the building permit in this case. One other thing I would like to point out that I passed over - that the plans and it is my understanding this was confirmed both by letter and telephone and the plans so specify, that the purpose stated in the building permit was to have a building erected and that building would be a medical building. I would point out to the council that the Zoning B-4 is inclusive of other lesser zoning provisions and I would point out that would include B-2. And I would direct the council's attention to Page 2-77 which states the uses would include but not limited to the following and one of those subheadings is medical facility. It is our position that we have been in compliance - strict compliance

with the ordinances and that accordingly the building permit should have been granted and the Mayor's decision should be overturned by this council.
Mayor Brombolich – Mr. Appoian do you have anyone that would like to address the council?
Mr. Appoian – Yes I would ask that Mr. Tom Hall rise, I would like to ask him some questions.
Mayor Brombolich – Please Mr. Hall now is the time.
Mr. Apoian – Would you state your name please?
Yes – Mr. Thomas Hall.
Mr. Apoian – What is your occupation Mr. Hall?
Mr. Hall – I am an architect.
Mr. Apoian – Are you familiar with Archview Investments Inc.?
Mr. Hall – Yes, sir.
Mr. Apoian – Were you engaged by Archview Investment Inc. and when were you engaged by them?
Mr. Hall – In early 1980.
Mr. Apoian – And what was the purpose of your employment by Archview Investments?
Mr. Hall – To design a medical office building.
Mr. Apoian – Exactly – can you tell the council members what you did to effectuate the wishes of your employer?
Mr. Hall – We followed basically standard procedure that we do in the firm in terms of gaining zoning, building code information obtaining the criteria necessary for the design both from the City's point of view and the client's point of view and correlating that material into a project. We try to research the necessary zoning requirements, zoning code requirements, fire district requirements and design our building to conform with those.
Mr. Apoian – In conducting your research did you make yourself acquainted with the B4 zoning district of the City of Collinsville?
Mr. Hall – Yes I did.
Mr. Apoian – And were you certain that the plans that you prepared were in conformity with each aspect of the B–4 zoning

requirements?
Mr. Hall – Yes they were.
Mr. Apoian – And could you tell the council, exactly, how you made sure they were in conformity with those provisions?
Mr. Hall – Essentially just by researching and also by previous experience of knowing the facilities that are allowed within that zoning and it was very specifically – we checked with the City records to find that zoning and the people that we were buying the property from verified that zoning and then correlated that with permissible usage.
Mr. Apoian – In your work were you cognizant of the BOCA provisions and other standards and were they so met.
Mr. Hall – they are.
Mr. Apoian – After the time of preparing the plans, what did you do next?
Mr. Hall – Upon the completion of the architectural and structural drawings submitted for a voting.
Mr. Apoian – And how did you do that?
Mr. Hall – By appearing at City Hall and asking them and filling in that application and leaving with them a set of architectural and structural forms.
Mr. Apoian – After that was done were you contacted by anyone from the City?
Mr. Hall – No we were not.
Mr. Apoian – Did anyone from the City ever contact you at all with regard to your plan both architectural and structural were not in complaince with BOCA provisions?
Mr. Hall – No one ever contacted me in regard to the set of plans.
Mr. Apoian – Let me ask you this question, If they had, would you have made an effort to remedy those decisions?
Mr. Hall – Oh absolutely, the typical are that we submit whatever we are doing, the project is reviewed by the pertinent authorities, we are contacted as to any violations that need to be corrected in the building plans, we meet with whatever personnel

is necessary, make the necessary corrections and resubmit the drawing.

Mr. Apoian – that is all I have at the moment.

This is the correct one then, you testified you were contacted by _____.

Mr. Hall – It was originally in 1980 – late 1979 or early 1980.

Mr. Apoian – Thank you. We would have nothing else to present at this time.

Mayor Brombolich – Does the council have any questions of Mr. Apoian or Mr. Hall?

Commissioner Pamatot – Mr. Hall are you a licensed architect in the states of Illinois and Missouri?

Mr. Hall – Yes sir, I am.

Mayor Brombolich – Mr. Hall the application and the building plans that were submitted to the City by Archview Investments in March, 1981, are those the same plans that you submitted, or someone submitted for Dr. Escobedo in October of 1980?

Mr. Hall – Essentially, with more detail and they were more of a complete set of plans, but essentially yes.

Mayor Brombolich – I might ask Mr. Apoian, the letter from me dated March 23, in the second paragraph, "Investigation conducted by the City concerning the factual information contained in the application has been met with resistance, which includes lack of knowledge, repeated referrals to other people who have little or no knowledge, outright refusal to answer legitimate inquiry, the use of a secretary without financial interest as incorporator, etc." And you say that you have met all regulations under the BOCA code, in Section 111 of the BOCA Codes under applications for permit, section 111.3, By Whom Application is Made – Application for a permit shall be made by the owner or Lessee of the building or structure or agent of either, or by licensed engineer or architect employed in connection with the proposed work. If the application is made by persons other than the owner, it shall be accompanied by a duly verified affidavit of the owner or a qualified person

making the application that both work is authorized by the owner and that the applicant is authorized to make such application. The full names, addresses of the owner, licensee, applicant, and responsible officers if the owner or licensee is a corporate body shall be stated in the application. You deny that we tried to find out who the officers in the corporation were?

_____May I have a moment?

Mayor Brombolich – Please.

_____While we are looking thru our file, I would say this that when we prepared the application we were not told that this was applicable, however with regard to your inquiry, Archview Investments is a corporation and all that information is ascertainable, a matter of public record and at no time did we conceal, or even think we were concealing that information from you or any other appropriate city official. If that is the problem, and again perhaps you did allude to that in your denial letter of March 23rd we stand ready willing and able to provide affidavits or any other information that this council or any other appropriate city official would want. We are not attempting to conceal anything whatsoever.

Mayor Brombolich – Let me continue under this Section 111.4 – Description of Work. The application shall contain the general description of the proposed work, its location and the use and occupancy of all parts of the building or structures and all portions of the site not covered by the building or structure and such additional information as may be required by the building official. Asking the intent by a direct phone call to Dr. Escobedo and trying thru our police department we were denied any answer as to the intent of the building and as BOCA Code clearly states that the Building Commissioner the person responsible does have that information – and is the type of information that should be given to him. Can you answer what is the intent of the proposed building?

Mr. Apoian – Yes, very clearly. It will be the intent – it will be

a medical building, it will be rented to other medical people, there may well be a pharmacy, but the intent is it will be a medical building, that's been our intention, it still is our intention, that was specified in the application and I don't think we can be any clearer than that.

Mayor Brombolich – The application from Dr. Escobedo in October, 1980 stated the purpose of the building will be a medical facility, the application by Archview dated March, 1981 said a multi–tenant office building. I consider that two differing types of poles applications of the building. Is your facility a medical building as you are stating now or a tenant office building as you stated in your permit?

Mr. Apoian – If the Mayor would look at the plans that were submitted with the letter of application the plans were very clear that the proposed building was going to me a medical building.

Mayor Brombolich – but the application denotes what the purpose of the building is and its listed as a multi tenant office building.

Mr. Apoian – Perhaps the misunderstanding is our fault, but we believe that if taken as a whole the application together with the architectural drawings etc. taken as a whole, make it quite clear that the purpose and intent was that a medical building would be constructed.

Commissioner DesPain – Could you give any reason as to the confusion why you would call it one thing one time and multi tenant office building the second time – why wouldn't you attempt to be more clear than what you were?

Mr. Apoian – We apologize if we left an ambiguity there, I can offer no explanation other than the fact that if you look at the application and plans that were submitted as a package, the intent is clear that it was a medical building and if there is any confusion or misunderstanding here tonight I would reaffirm that before this audience, that the present intent is that we would seek permission to erect the building and use it for a medical facility.

If I may Mayor, Mr. Hall is here and you can ask him of the intentions that were expressed to him in regard to the proposed ??
Mayor Brombolich – Mr. Apoian my point is that you stated previously that there was not any reason given and I think I stated very clearly in the very first paragraph the reasons for the denial it was met with resistance and as far as I am concerned the BOCA Code states that you have the applicant has the responsibility to state the exact intent and not has the duty to state intent of the use of building and it still hasn't as the application shows now, and I tried to make inquiries of the intent of the building and it was met with resistance and no information, as far as I am concerned saying "general practitioner or dentist" is not, as far as I am concerned, with the background of one of the persons involved with the corporation, is still not sufficient. And I want to know if it is a office building or if it is going to be a medical facility,w hat type of doctors do you propose to have as tenants in this building?
Mr. Apoian – It will be a professional building, a medical building, doctors of various fields of medicine will be permitted to secure space from the corporation. By medical building it would cover the whole gamut of specialties general practitioner, dentist.
Mayor Brombolich – Mr. Apoian, let me approach that in a different way, with the background of Dr. Escobedo, with the original application in October, and the subsequent use of his address in his clinic on Manchester Road as the mailing address for the application of the Illinois Corporation, with Dr. Escobedo's background is the intent to bring any other practitioners from Missouri or anyone in that line that advertises in the yellow pages as far as abortions performed etc. is it the intent to have those types of facilities and those type of doctors involved that he is associated with in Missouri?
Mr. Apoian – Rather than me speak for the doctor if the Mayor would like address the question directly to the doctor.
Mayor Brombolich – Remember that conversation by phone a number of months ago and I asked you the intent of your building

the intent of the users what type of facility would be there what type of doctor would be there and my last question of which you refused to answer and you referred me to your attorney the last question is – will your associates in your business in Missouri or people in the like type of profession be involved in the facility in Collinsville, namely abortionist, and you refused to answer that question at that time? Can you tell me now will you or will the facility involve people of that nature?

Dr. Escobedo – Well, my thoughts ever since we legally presented request for a permit has been to build a medical building.

I don't recall the conversation – but I think I said –

Mayor Brombolich – Again, because of your association in Missouri clinic and your association with practioners involved in the medical field of abortionists and things of that nature, would you foresee any of those types of physicians being involved in your clinic locally?

Dr. Escobedo – My present plans are to put a medical building in this place.

Mayor Brombolich – Thank you, doctor.

Commissioner DesPain – Mayor – doctor – Is it intended that this facility will be licensed as an ambulatory surgical center by the State of Illinois?

Dr. Escobedo – My plans are to put a medical building up. --

Commissioner DesPain – Did you understand my question, it was a direct --

Dr. Escobedo – At the present time I only plan to put up a medical building.

Commissioner DesPain – You do not have an application at the present time to the State of Illinois for an ambulatory surgical facility?

Dr. Escobedo – I do not.

Mayor Brombolich – Let's move on to another area. Anytime a council member wants to jump in – please do. My letter dated March 23, 1981, you mentioned that date as the date the letter was

submitted at least typed and sent out by this office. We also received an appeal on April 6th, do you concur with those dates, the appeal to the City Council we received it on April 6th?
Mr. Apoian – What ever your records show.
Mayor Brombolich – Under the Collinsville Municipal Code Section 16.18.010 Procedures of Appeals – Any person not satisfied with the decision or action or failure to act of any officer on an application for permit or for inspection or for approval or for any other administrative function in your administrative procedure provided in this chapter may appeal in 5 days to the council. This appeal shall be in writing filed with the City Clerk, and shall state briefly the alleged error in the decision or action or failure to act; the City Clerk shall present the appeal to the council at their next regular meeting, the council shall affirm or reverse to correct or remand the decision so appealed. The date of March 23rd and we received the appeal on April 6, is more like 14 days. In fact is exactly 14 days. Now very clearly, in our municipal code it calls for an appeal to take place within 5 days. Do you have any comment on that please?
Mr. Apoian – Yes sir, Mayor, first of all, if I can address myself to Division 16 if we read that in its entirety it is our position that the Mayor is not the proper party to deny an application for a building permit. Secondly, if I may, when we received your letter of March 23, 1981 it was our opinion in reading the letter as a whole the reason for denial was zoning type problems. And accordingly we perfected our appeal before the Zoning Board of Appeals pursuant to Chapter 19, which is the Zoning Ordinance. Pursuant to the Zoning Ordinance our appeal before the Zoning Board of Appeals was and that appeal was to be held in June, June 23rd if I am not mistaken. On June 22nd or 21st the exact date escapes me, I communicated with the Corporation counsel after receiving your second letter of April 15, 1981, and I might add that we didn't receive that on April 15 or 16th, it got to us quite late, why I don't know, but at any rate your letter of April

15, 1981 is attached as Exhibit 2 of this appeal indicates that the proper jurisdiction of the Board of Appeals was on Zoning matters, which signaled to me that in your initial letter denying the building permit that you were denying it not because of a zoning problem but because of something else. So in communication with the Corporation Counsel, we were of the opinion, he was of the opinion that this is not a zoning problem and the appeal which was previously filed before the Zoning Board of Appeals be continued. And brought before the City Council to take up whatever reasons this body and you in particular had for denying the building permit. It was also discussed with regard to the 5 days rule in Section 16 of which you have just referred that that would begin to run after our June 23rd meeting before the Zoning Board of Appeals, and accordingly on June 24th I filed the appeal which is presently before this body, I would state further that provision Section 16.20 concerning appeals does not state may appeal within 5 days to the council – it does not state within 5 days from what action. So essentially when we were before the Zoning Board of Appeals back in June 23, I believe, we were of the opinion to expedite matters to bring this appeal before this body, because as a practical matter should we have not received the week from the Zoning Board of Appeals we would have appealed before the body anyway.

Mayor Brombolich – I think we are getting some timing, the letter that we are referring to on March 23rd and received an appeal marked April 6 and you stated the reason that appealed to the Board of Appeals and you thought it was a Zoning matter and it wasn't appealable to the City Council because it was a zoning matter. It was a very short letter, let me read it and you can tell me how you could interpret it as being a zoning matter. The City denies to issue a Building Permit pursuant to the above application. Investigation conducted by the City concerning the factual information contained in the application has been met with resistance, which includes lack of knowledge, repeated referrals to other people who have little or no knowledge, outright refusal to

answer legitimate inquiry, the use of secretary without financial interest as incorporator, etc.
As Mayor of the City, I feel that it is not in the best interest of the City to issue the permit.
It is my belief, based upon application and the investigations conducted by the City, that the applicant i attempting to conceal from the citizens of Collinsville the real use for which the building is intended, and that the applicant is causing an additional financial expense upon the taxpayers of the City by failing to cooperate in the investigations. If in fact the building is to be used for an abortion clinic, it would be contrary to the general health, safety and welfare of the public to issue the building permit. Signed by myself. Where do you interpret anything in her to be involving zoning?
Mr. Apoian – Well, if I may under the Zoning Ordinance under which we were aggrieved were to go before the Zoning Board of Appeals in construing your March 23rd letter it indicates to me, that we were almost in, as you term a Special Use situation under B4 which proven you were not, and if your honor would refer to Section 1-12 Special Uses I won't read the entire thing. Considerations in granting Special Uses it states this Ordinance divides the entire City into districts and in each district there are mutually compatible uses which are permitted. It is recognized however, that other uses may be necessary or desireable but their potential influence or permitted uses could be harmful In other words what that is saying is that basic ground work as to zoning in general the municipality can determine the health welfare etc. in creating zoning districts. In your letter of March 23rd that indicates that may be one of your reasons, we were not really sure, because there is language in her as to creating a problem etc. and we interpreted that as being a zoning problem. Possibly your honor was interpreting our request as a Special Use which it clearly was not the situation under the zoning code. But, all that aside, it has been our position from the very beginning as it is now that the

denial letter of March 23rd, is improper whether we go under Section 19 of the Zoning Code or whether we go by Section 16. The Ordinances under both provisions clearly specify the reason for denial and if the reason stated in your letter of March 23rd are not in conformity with the Ordinances. Mayor Brombolich – I believe that in the discussion of the BOCA Code in requiring petitioners to give information as to the use, as to the officers in the corporation, was the reason for the beginning paragraph. The last paragraph indicates what I feel, as an officer in the community, would be the problems with such a facility, if the facility would be an abortion clinic. No where did I indicate it would be a zoning matter, in fact, once the appeal came in 14 days after the denial was issued, which is not in accordance by our municipal code which requires a 5 day period, after that there wa another letter sent out that I sent to the Archview Investment again. "It has been brought to my attention that you have filed a Notice of Appeal to the Zoning Board of Appeals from denial of Building Permit. So that you will not be misled, please be advised that the jurisdiction of the Board of Appeals is limited to matters of zoning. While the zoning ordinance has sections relating to Building Permits, other local ordinances relating to Building Permits are contained in the Collinsville Municipal Code, Division 16. The Code Division 16, requires, among other things, that the Mayor approve all building permits (Section 16.12.050). This division also adopts the BOCA Building Code for the City and said building code contains requirements regarding building permits.

The City will interpret any order issued by the Board of Appeals a being limited to zoning matters.

However, so that you will not be denied any remedy that you choose to pursue in this matter, your appeal is being processed in the usual manner".

I think what we are telling you is that it is not a zoning matter. Still you decided to appeal to the Board of Appeals – not the City Council and not within the time limitations as restricted by our

City Code. This is my point that I am trying to get across right now.
Commissioner Giflotto – I would like to ask Dr. Eacobedo a question. Doctor, do you plan yourself to have an office in this building?
Dr. Escobedo – I do not plan at this time.
Com Giglotto – At anytime at all?
Dr. Escobedo – At present time I don't plan – I have my practice in West County. In St. Louis,
Co. Giglotto – And what happens, if you decide, we will say, to move?
Dr. Escobedo – I am very busy in St. Louis, I got no time to come here.
Com. Giglotto – If, If – If you took up residence in this building, and a woman came to you and asked for an abortion, would perform that abortion, in that building?
Dr. Escobedo – Well – I cannot answer that question.
Com. Giglotto – Why not? Are you a doctor?
Dr. Escobedo – I don't practice here, too.
Com. Giglotto – I said, if you were in the building and a woman came to you and asked for an abortion, would you perform that abortion in that building?
Dr. Escobedo – Sir, I am an obstetrician and gynecologist and I would provide any service required for any woman that would come to me as long as it wa according to the law. --
Commissioner Giglotto – That's all I have right now.
Mayor Brombolich – Mr. Apoian, In trying to investigate in trying to arrive at what the facility would be used for and by who – and who is the owner, there was some inquiries made and I would like to read a little bit of the input I received. This was dated March 18, about the application for a building permit. On March 18, Attorney, Betty Cooper of 7751 Carondelet, Clayton, Missouri representing Archview Investment Inc. contacted me regarding information I requested on March 13, 1981. He advised that the

incorporator of Archview Investments Inc. is his secretary, W. Braun 12150 Eperney Court, Maryland Heights, Mo. who has no financial interest in the corporation. He also advised that as an Illinois Corporation formed January 28, 1981 with Attorney, Cary Apoian, 110 North Main Street, East St. Louis, Illinois as a registered agent. He further advised that the correspondence mailed to 13979 Manchester Road St. Louis, Mo., that the corporation would receive the mail but he would not disclose the identity of the person receiving the correspondence. Mr. Cooper also would not disclose the name of the corporate officers or would reveal that a Dr. Escobedo was associated with the corporation, this wa a memo to me from Detective John Swindle from our local police department. This is exactly the type of corporation and referrals we had and denial of the very sincere request to find out who owned the corporation, what type of facility it was going to be, that was met with resistance all along. And it was the main objections and the reasons that was stated in the application denial of March 23, 1981.

Mr. Cooper – I have represented Dr. Escobedo in the past, most of what you said I agree with. The gentleman that called me identified himself as Detective John Swindle I think that was the correct name, of the Collinsville Police Department. To begin with I have been practicing in Missouri, I am not licensed to practice in Illinois, since about May of 1957, I have been involved in similar matters involving real estate etc. and I have never, nor has anyone in my office ever had a police officer call us in connection with a zoning matter, application for a permit, anything involved with the development of real estate. So I found that extremely unusual, however, everything you said up to about, just concur with the things you said. Debra Brown is my secretary I told him that, I told him that she has no financial interest that is correct. I told him – I don't know if you said it or not, I couldn't remember, I told him when the corporation was formed I gave him the date, I told him it was an Illinois Corporation and what you didn't allude to

was that I told him he could confirm all this by checking in Springfield, because that is where it is on record, as Mr. Taylor well knows. I advised him of the name of the registered Agent, his address, all of which is on record, I did not disclose him the names and addresses of all the officers, he asked me and I told him that I would have to consult with my client before I give out that information. But that is not unusual because I didn't know why that detective was calling, so as an attorney representing a client I had no reason to believe there wa any reason for him to know that, as it turns out, you knew anyway and we have never hid from you that Dr. Escobedo has an interest in this corporation. Mayor Brombolich – That is the first I knew that he had an interest. – Please Mr. Cooper – I know that I am not in a friendly crowd here but at least give me an opportunity to be heard. I have never heard of a detective calling up for something like this. If you were my client Mayor, and the same thing happened, and I don't know what you were going to put up in the way of the detective also found it strange that the application for the building permit listed as a mailing address the owner's address 139775 Manchester. I told him that was because the piece of property that the client had purchased was a raw piece of land in Illinois and there was no address and there was no post office box in Illinois other than Mr. Apoian's office and of course I had given them that address. He found that very strange to, he found it strange that an Illinois Corporation wouldn't have a mailing address in Missouri, and then he found it strange that an Illinois resident might own stock in a corporation that was authorized to do business in Illinois and that was formed in Illinois. I didn't tell him what I am about to tell you, because there was no need in discussing that.

Mr. DesPain – Do you want to clarify? – I believe you said Illinois resident. Mr. Cooper – No. I'm sorry it's Missouri. He found it strange that a Missouri resident might – he wasn't sure who the Missouri resident was – but I knew then that he knew more than he put on to know – he said that he found it strange that a

Missouri resident would own stock in a corporation formed in Illinois and authorized to do business in Illinois, of course as all you gentlemen know anyone who owns stock in a publicly owned corporation whether it be AT&T or anything else, you are not residents of whereever it is incorporated, presumably in New York or Delaware. But as far as what you said, except for that explanation Mr. Mayor, what had been reported to you was correct. May Brombolich, I don't know what is so unusual about a detective in the Police Department of a local community investigating or substantiating facts or lack of facts on the application, it is not unusual for the City of Collinsville and not unusual for me, I might go a little further showing or trying to show that we were trying to arrive at some of the facts that we needed to process the application. Another memo dated March 13 from Detective Swindle to me Mr. Cooper – You said the 13th, that conversation I just alluded to took place on March 18th.

Mayor Brombolich, This one is March 13th where he calls attention to talked to Mrs. Katz, a secretary at Fleischer–Seger Construction Co. at 5725 Manchester Road in St. Louis, stating her company owned and managed Regency Park Medical Center whose address 13975 and their records revealed that the company by the name of Archview Investments Inc. was not a tenant in the complex located at 13975 Manchester Road, the application address is the corporate headquarters or address. Gene Balazey, nurse at Dr. Escobedo's office 13975 Manchester Road St. Louis County stated that she was not familiar with the Archview Investments Inc. and that she checked the directory posted in the building and the name was not listed in the directory. And it goes so on into contacting secretaries in Missouri and Illinois; what I am trying to say is that not was their conversation with you on the 18th but their conversation with secretary, the construction firm and the owner of Lamack Construction Company stated that he had been contact to construct a building on Pine Lake in Collinsville.

However, he did not know who the owner of the building would

be and was not familiar with the Archview Investment, Inc. He further stated he was working for the architect for the building, a Mr. Thomas Hall. Even the building construction people did not know who they were building the building for. This was the type of resistance that was met with our personnel from the Police Department, trying to arrive at the fats that as stated in the BOCA building code that should be immediately available to us, and we met resistance, and that it the reason, one of the reasons, for the letter of March 23, 1981. It is clearly stated, it has nothing to do with zoning it doesn't mention or refer to zoning as far as I am concerned.

Mr. Cooper – I can't answer what your investigation revealed. I don't know Mrs. Katz and I don't know the secretary you just mentioned, so I can't answer whether I would agree with what was reported back to you or not. If I may be so blunt, I really never understood after reading your letter, after checking the law, except for your obvious opposition as everyone else here has to anyone who may perform or be involved in abortion. I really never understood what difference does it make if we made you an officer of the corporation, or this fellow here or anyone here. What's the difference if the application for the permit, the plans and the purpose of the construction all comply with your law, what is the difference? I wouldn't care whether you were a secretary of a corporation or anyone here, what their background was, as long a they were in compliance with the law. How can you stand in judgement of other people? Mayor Brombolich – Mr. Cooper it is very simple, the City of Collinsville does not require a business license, I review all applications, business applications business and residential. That is our only means of overseeing what comes into the community. Nothing unusual has been done to you that has not been done to people in the pat or will be done in the future. That is the only way that I as the Chief Executive of the community receive input. If it is in the general walfare of the community, for this type of facility, at this location to be built. As such I sought

information as to who was building the building nd then whenever the application was changed and the corporation wa immediately formed before a similar application with a different purpose, even tho the plans were exactly the same, I though this was unusual and tried to investigate who was building it. If the original application of Dr. Escobedo's was being hidden by a corporation being formed, or if they actually wa a corporation using a different purpose for the facility on Pine Lake Road, and I was met with resistance. I am telling you to your face that nothing was done differently to you that has not been done in the past and will not be done in the future, as long as I sit in this chair.

Mr. Cooper – It seems to me that what this doctor wants to do will help the community. Now you just started one of the reasons you make these investigations is to, has something to do with finding out the stability of the corporation or the person that is going to build the building. I think that is what you are referring to. No one has asked me and I don't think he has asked you and I know he has never asked the doctor or Mr. Hall, #1 what he paid for the land? #2 I think the application for the permit, if it is a standard application does have a projected cost on it, no one has asked the projected cost, what you are going to put into the building, how it would enhance the value of the property, no one asked those questions, and you are talking about the stability of the person or persons or corporation building, those questions seem more pertinent than whether you or I are an officer of this corporation.

Mayor Brombolich – Mr. Cooper, because of the intent of this facility more so than the stability of the corporation is more important to me, because the intent and use for a couple of reasons. 1. If it is an abortion clinic or abortions are to be performed, I am familiar with what is taking place in Granite City. I am familiar with what is taking place at De. Escobedo's facility on Manchester Road thru input from St. Louis County Police Department. I have to take into consideration the problems of traffic, crowd control where demonstrators may be in the future, things like parking,

general public nuisance. These are the things I have to be concerned about if it is to be a medical facility, and if the medical center is to be used for something similar to an abortion clinic and the main reason is because of Dr. Escobedo's background. I have every reason to believe that his type of background is not going to change once he is in ownership or part ownership of a facility here in Collinsville.

_____ Mr. Mayor, what you jst said, is the reason that the appeal was taken to the Zoning Board rather than this body initially was because of the tone of your letter and there were about 5 of us that looked at your letter and none of us cold agree with what it meant, the only thing that we could assume was that if he was going to put a facility that would house an abortion clinic, that if he was going to do that, that was not within the zoning ordinance, that is the only way that could be read.

Mayor Brombolich – I don't see how you could interpret that, I read it once and I will read it again.

_____ Mr. Mayor do you think we would have ignored appealing under anything else, the man wants his permit he wants to build a building. He is not a lawyer he is not playing lawyer, he wants no more or less than if you wanted to build a home and someone denies you a permit. All he wants to do is get his building up if he can, he is not intentionally ignoring a part or parts of the law, so we looked at it and we saw only you talking about health and welfare and abortion is the only thing we could surmise, is that you are complaining about it not being in the proper zoning district.

Mayor Brombolich – Well, Mr. Cooper the only thing that I want the corporation to do is live within the laws that I live with, and the procedure is stated in the Municipal Code, and it is stated very clear and the only thing that I am referring to is that the appeal procedure did not take place during the proper timing and if I was trying to build a home I would appeal and I would appeal during the proper timing, as dictated by law and I am trying to bring that

point across.
Mr. Cooper – The chances are Mr. Mayor you would be more familiar with–than most people because of your knowledge of the ordinances, perhaps when you would appeal you would have got the direct reason from whoever, the powers may be that denied you the ampliation for permit, and as we read it first of all, please take this in the right sense, when we read the ordinance you didn't have any right to grant or deny it, I believe it was up to the Zoning Administrator under your office, and even under the ordinance to which you allude it doesn't say that you are the one that either denial (I think it was put in the negative) that you are the one that denys it, but I dont know that we are here to discuss that, I am not here to argue a point of law, but only to give you the reasons why the Archview appeal is under the zoning ordinance.
Mayor Brombolich – Does any council member have any questions for the petitioner?
Commissioner Pamatot – Dr. Escobedo, Are you currently leasing from facility from Fleischer–Seger on Manchester Road?
Dr. Escobedo – Yes
Com. Pamatot – Could you tell me the extent of that lease, for how many more years?
Dr. Escobedo – We just renewed it, I don't remember, I can get you a copy of that lease if you want.
Com. Pamatot – I would take your word for it.
Mayor Brombolich – Is there anyone else? If there are no further questions of the petitioner, we will seek input from any objectors that are here for this public meeting. Again, as I referred in the statement at the beginning of the meeting, anyone that would like to address this council, as an objector to this appeal, I will ask that you come forward to the microphone, state your name and address and be as brief as possible, because we have a lot of people in attendance, and we all don't want to be here all night. And I reserve the right to cut people off if you become repetitive, because if we get repetitive we will spend a lot of time saying the same

thing. Now who would like to be first?
Suzanne Anderson – I would like to ask some questions.
Mayor Brombolich – No, please, the only thing that I am asking for is input to the council, I am not going to have a cross discussion between the petitioner and the objectors.
Suzanne Anderson – My objection is, I have not seen the plans of this building and obviously the members of the council have, and perhaps you are the ones that could ask the proper questions to find out. This is a medical facility. Have you seen the plans for other medical facilities? If this like other medical facilities, or are their special things built into this particular building that are not put into medical building? Is there something special in the way of waste disposal, that you would not normally find in a building of this type, anything besides toilets or sinks, or a utility room that would have a garbage disposal, or is their any provision for any type of wall units that might have suction in them, that have been put into these plans? I would be very interested in knowing if there is anything like that.
Mayor Brombolich – I am not familiar with anything like that. Our building inspector is in attendance. Mel did you see anything unusual like that?
Mel Heinicke – No sir, I did not see anything like that, its like any other medical building that was built.
Ms. Anderson – Its like any other medical building that been building here in town, Thank you.
Mayor Brombolich – Anyone else.
Maggie Brennan – There are petitions signed by 2,000 people from Collinsville, Maryville, Caseyville, Troy, Edwardsville and St. Louis that support your denial of issuing a building permit on Pine Lake Road. We feel the applicant is attempting to conceal from the citizens of Collinsville the real use for which the building is intended.

I have another statement, I am familiar with physicians and when they plan their office buildings they are usually asked to

submit to the owner or corporation what they like in there overall planning for their office, how many rooms, what type of equipment etc.. So if this going up as a medical facility now, that does not mean that it cannot be changed in the near future for the needs of whatever is designated 3 or 4 years from now.

Mayor Brombolich – Anyone else

Ralph Heiman – I live in Collinsville. I am reminded as I listen to this, this evening that there are various undesireable facilities that all of us have read about at one time or another that start with waste disposal, dumps so to speak which are a constant problem. We could talk about hazardous wastes which today has a very special problem from the standpoint of the federal government trying to find a state that will accept such a disposal facility and certainly we have prisons – just to name a few. I would hope that the council supported by the citizens of Collinsville would continue to stay aware of disguised technically illegal setups that could ultimately house such an undesireable facility, and that we find a means to prevent this happening, if not by virtue of the kind of presentation that happened here this evening, but perhaps potentially thru a referendum or some other system.

Mayor Brombolich – Anyone else

I am Teresa Benevenuto and I want to say that I have grown up in Collinsville and I am very proud of it, and I would hate to see any kind of abortion clinic in it.

Mayor Brombolich – Mam

May name is Renee Hoskins and I am from Collinsville. I would like to say, this is America, I got into this argument at a teacher's lounge where I work, and unfortunately the majority rules and this is our town, and these men are our elected officials and the majority would seem to say, that are the people that come out on election day, these are people who petition and campaign for people whose voices are heard, and so these men have to be aware of that to, and this is what we want. We don't want anybody to build an abortion clinic in our town and kill babies here, and so our

Mayor said we are behind him and that's important and you have to remember that too that's more than the law, real legal nit-picking stuff.
Andy Klein – I have not been a long time resident of Collinsville, but I think that we look at a community here in is interested. And I address particularly these lawyers here, I am starting law school in August. And even tho you look at the fact that how can I manipulate boards how can I look and get what I want in the way of my terms, I think there are things more important in life than just how I can manipulate to get what I want. I think the people here know what the reason it and even tho abortion itself is legalized still doesn't mean that we have to support it and I think the crowd here is behind the fact that the right to life is a right that has run thru the halls of freedom throughout our country for many, many years and its not so much what the law says but what we know is right. And what you say is what Representative Melvin Price says is destructive interpretation, to get what you want. The main thing is whats in your heart, and I ask you gentlemen up here, Dr. Escobedo and you two lawyers, I hope that I can be one in three years, even tho you play the fact of words you play from the standpoint of technicalities of law can get you what you want, would you want your own children to be running around abortions, would you like it if your mother would have had you an abortion? So its more or less that the people want but more important what you know in your heart is right, because in the end run your conscience will rule.
Mayor Brombolich – Is there anyone else, if not we will move on? My name is Marie Camillo, and I am a naturalized citizen, very proud. The allegiance to the flag says freedom for all and that means the unborn children.
Mayor Brombolich – we will move on to the rebuttal. Mr. Apoian would you like to address the council again after what you have heard here or any points you would like to make before this council would make a consideration?

Mr. Apoian – Mayor I don't have much in the form of a rebuttal, I understand the ground rules. Your honor does not need for me to reiterate what I said earlier, then I would have nothing in direct rebuttal to what was said here other than the fact that the ordinances are clear, and we are entitled to the building permit.
Mayor Brombolich – Thank you. Does any council member have any further questions from the petitioner any clarification before we take some kind of action?
Commission Giglotto – The only comment I have Mayor is if I could wear a different hat now and talk as a citizen of this town and not a council member. I find it very very difficult to understand why any person no matter who, color or sex would take an oath to protect, preserve, life would want to do the exact opposite. I find that hard to believe.
Commissioner Pamatot – Mr Mayor may I say something at this time? I would like to state that what you did at the beginning of this year was a very courageous thing, that you represent this community and certain members of this council. A lot of things are permitted by our constitution throught the country, but Collinsville is my hometown and I do not necessarily allow everthing to go in this community. Mr. Mayor I would like at this time to make a motion.
Mayor Brombolich – The motion is in order.
Commission Pamatot – I move to concur with the position of the Mayor and deny a building permit to Archview Investment, Inc. on the following grounds:

1. Appeal was not filed in compliance with the requirements of Sec. 16.20.010 of the Collinsville Municipal Code.
2. It is contrary to the general health, safety and welfare of the public in the following respects:
    a) cause traffic problems
    b) cause parking problems
    c) cause crowd control problems
    d) create a public nuisance

e) is contrary to public policy of this city

3. Applicant failed to comply with requirements of the BOCA Basic Building Code/1981 Sections 11.2; 111.3; 111.5; 111.6; and 111.7.

Commission Giglotto second the motion.

Is there any discussion or comments?

Commission Klein – Mr. Mayor I would just like to made a brief statement. This decision this evening that these 5 gentlemen up here are going to vote on, setting aside the emotion issue that a good many people in the audience are here about this evening. I feel should be based upon, primarily speaking for myself to the office for which I was elected must be based solely on whether the people that are applying for something much be in compliance with the applicable statues of the state, City ordinances which the BOCA Basic building code that the motion has reference to. Using those things as the basis, I think this is what we all have to decide what is actually right and legal, based upon these things, not the emotional issue.

Mayor Brombolich – Does anyone else want to make a comment before we take roll call?

Commissioner DesPain – If we could just take a little time Mayor.

Mayor Brombolich – While the commissioners are taking time to compile their thoughts, I would like to introduce the members at the tables here. Mayor introduces the council, City Clerk, Attorneys Taylor and Urban.

Commissioner DesPain – I feel that Mayor has to make some decisions, some of which all the legal ramifications cannot be addressed specifically. I feel he has to have administrative discretion. I feel that there is an extreme emotional issue in regard to this, I do not feel that that particular emotional issue should be particularly address in that, however I do fee that he should have the administrative discretion at least that 2 of the 3 parts of the motion I concur with and upon roll call I will concur with it.

Mayor Brombolich – Would anyone else like to address? Before

we have the roll call, I think that my opinion and my viewpoints have been clear since last October, and I won't bother to reiterate, but my position has been very clear all along.
Roll Call City Clerk.

Ayes: Pamatot, Giglotto, Klein, DesPain, Brombolich.
Nayes: None

Mayor Brombolich – The appeal of the decision of that permit has been denied, the permit will stand as denied to the petitioner. The only thinkg I can say Mr. Apoian is that the minutes of the meeting will be made available to your and whatever assistance we can have to any further legality that you wish to pursue will be of a talkative nature.

Thank you everyone for attending. We are adjourned.